

## Council Communication

Department: Community Development Case #ZT-08-001	Ordinance No. <u>6012</u>	City Council: 9-22-08 Planning Commission: 9-9-08 First Reading <u>9/22/2008</u> Second Reading _____ Third Reading _____
<b>Subject/Title</b> Repeal Chapters 15.01, 15.02, 15.27 of the Municipal Code (Zoning Ordinance) and adopt new Chapter 15.01 'Title, Purpose and Intent', new Chapter 15.02 'Administration and Enforcement' and new Chapter 15.27 'Zoning Districts' of the Municipal Code (Zoning Ordinance).		
<b>Background/Discussion</b> The City hired <i>Camiros</i> , a planning consulting firm located in Chicago, Illinois, to develop amendments to the existing Zoning Ordinance. The purpose of the proposed amendments is to 1) consolidate and clarify various administrative sections of the Zoning Code, 2) to create a process to establish and review 'temporary uses' and 3) to establish a site review procedure resulting in the issuance of a zoning certificate.  The administration amendments include changes to the title, purpose, intent, general provisions and administrative enforcements sections. The proposed amendments remove items from the current locations throughout the ordinance and consolidate them into one cohesive section. A temporary use section has been included to ensure that certain seasonal or other non-permanent uses are reviewed to determine if the proposed location and/or operation are appropriately served to the extend necessary. For example, the proposed amendment will allow staff to review seasonal sales areas to ensure they do not occupy portions of required parking for the primary use on the site. The purpose of the site plan review procedure is to enable review capability/authority for developments/sites which are properly zoned for the intended use. Currently the individual site review of such projects is limited to the building permit procedure.		
<b>Recommendation</b> The Community Development Department recommends repealing Chapters 15.01, 15.02, 15.27 of the Municipal Code (Zoning Ordinance) and adoption of a new Chapter 15.01 'Title, Purpose and Intent', new Chapter 15.02 'Administration and Enforcement' and new Chapter 15.27 'Zoning Districts' of the Municipal Code (Zoning Ordinance), as shown in Attachment 'A'.		
<b>Public Hearing</b> Gayle Malmquist appeared before the Planning Commission in favor of the request. No one appeared in opposition.		
<b>Planning Commission Recommendation</b> The Planning Commission recommends repealing Chapters 15.01, 15.02, 15.27 of the Municipal Code (Zoning Ordinance) and adoption of a new Chapter 15.01 'Title, Purpose and Intent', new Chapter 15.02 'Administration and Enforcement' and new Chapter 15.27 'Zoning Districts' of the Municipal Code (Zoning Ordinance) ), as shown in Attachment 'A'.		
VOTE: AYE 10    NAY 0    ABSTAIN 0    ABSENT 1    Motion: Carried		
<b>Attachments:</b> Attachment A: proposed text Attachment B: current text		
<b>Prepared by:</b> Rose E. Brown, Urban Planner		

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## CHAPTER 15.01: TITLE, PURPOSE AND INTENT

- 15.01.010 Title
- 15.01.020 Purpose
- 15.01.030 Statutory Authorization
- 15.01.040 Applicability
- 15.01.050 Transition Rules
- 15.01.060 Severability

### 15.01.010 Title

This Title shall be known, referred to and cited as the "Zoning Ordinance of the City of Council Bluffs, Iowa" (the "City"), and will be referred to herein as "the Ordinance" to the same as if the full title were stated.

### 15.01.020 Purpose

This Ordinance regulates and restricts the height, location and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, population density, and the location and use of buildings, structures, and land for commerce, industry, residence and other purposes in order to promote the public health, safety and general welfare of the City by:

- A. Directing development of the City in accordance with the Comprehensive Plan.
- B. Encouraging efficient urban development patterns.
- C. Preserving agricultural and environmentally sensitive lands.
- D. Preventing soil and water erosion.
- E. Minimizing traffic congestion.
- F. Protecting the value of property.
- G. Securing safety from fire, flood and other dangers.
- H. Providing adequate light and air.
- I. Avoiding undue concentration of population.
- J. Facilitating the adequate provision of transportation, water, sewage disposal, schools, parks, open space and other public requirements.
- K. Preserving historically significant areas of the City.

### 15.01.030 Statutory Authorization

The provisions of Section 414.4 of the Iowa Code, as amended, authorizes the City to determine, establish and enforce regulations, restrictions and the boundaries of the zoning districts set forth in the Ordinance.

*ATTACHMENT A*

**15.01.040 Applicability****A. Territorial Application**

This Ordinance shall apply to all land, uses, buildings and structures within the corporate limits of the City, including those owned by other municipal corporations and government bodies.

**B. General Interpretation and Application**

In their interpretation and application, the provisions of the Ordinance shall be held to be the minimum requirements for the promotion and protection of the public health, safety and general welfare, and shall be construed to achieve the purposes for which this Ordinance was adopted.

**C. General Prohibition**

Except as otherwise provided by the Ordinance, no portion or whole of any building, structure or land shall be used or occupied, and no building or structure, in whole or in part, shall be erected, constructed, reconstructed, moved, enlarged or structurally altered unless it conforms with the provisions of this Ordinance.

**D. Private Agreements**

The Ordinance is not intended to nullify any private agreement or covenant. However, where this Ordinance is more restrictive than a private agreement or covenant, this Ordinance shall control.

**E. Other Laws and Regulations**

In addition to the requirements of the Ordinance, all uses of land and structures shall comply with other applicable City, county, state, and federal laws and regulations. The Ordinance is expressly designed to supplement and be compatible with, without limitation, to the following City plans, regulations or ordinances: Comprehensive Plan; Subdivision Ordinance; Historic Preservation Ordinance; Flood Plain Ordinance; Building and Fire Codes; Rental Housing Code; Property Maintenance Code and other redevelopment, utility, transportation, subarea land use, or park and recreation plans. Unless otherwise specifically provided, the Ordinance shall control over less restrictive statutes, ordinances or regulations, and more restrictive statutes, ordinances or regulations will control over the provisions of this Ordinance.

**15.01.050 Transition Rules**

In determining the applicability of this Ordinance, with respect to the previously applicable zoning regulations, the following rules shall apply.

**A. Existing Illegal Uses and Structures**

A structure or use that is illegal at the time of the adoption of, but is made legal by the provisions of this Ordinance, is deemed lawful as of the effective date of this Ordinance. However, if that structure or use does not conform with each and every requirement of this Ordinance, then that structure or use shall remain unlawful. It shall be unlawful for any premises, building or structure, or any portion of a building or structure situated in the City to be used or occupied, erected, moved, reconstructed, extended, enlarged or altered in any manner contrary to the provisions of this Ordinance.

**B. Existing Permitted Uses**

If property is used in a manner that was classified as a permitted use prior to the effective date of this Ordinance, and that use is classified as a conditional use by this Ordinance, that use shall be deemed a lawful conditional use. However, any subsequent addition, enlargement or expansion of that use shall be required to conform to the procedural and substantive requirements for conditional uses pursuant to this Ordinance.

**C. Uses Rendered Nonconforming**

If property is used in a manner that was a lawful use on or before the effective date of this Ordinance, and this Ordinance no longer classifies that use as either a permitted or conditional use in the zoning district in which it is located, that use shall be deemed a legal nonconforming use and shall be controlled by the provisions of Chapter 15.26 (Nonconformities).

**D. Structures and Property Rendered Nonconforming**

If a structure or property existing on or before the effective date of this Ordinance does not meet all standards set forth in this Ordinance, that structure or property shall be deemed a legal nonconformity and shall be controlled by the provisions of Chapter 15.26 (Nonconformities).

**E. Previously Issued Building Permits**

If a building permit for a building or structure was lawfully issued prior to the effective date of this Ordinance, and if construction has begun within one-hundred eighty (180) days of the issuance of that permit and diligently pursued to completion, the building or structure may be completed in accordance with the plans on the basis of which the building permit was issued and may, upon completion, be occupied under an occupancy certificate for the use originally intended.

**F. Previously Granted Conditional Uses and Variances**

All conditional uses and variances granted prior to the effective date of this Ordinance shall remain in full force and effect. The recipient of the conditional use or variance approval may proceed to develop the property in accordance with the approval and all applicable conditions. However, if the recipient has failed to act on the conditional use or variance before the approval expires, including any periods of extension granted, the provisions of this Ordinance shall govern.

**G. Pending Applications**

If an application is pending on the effective date of the Ordinance or any amendments thereto, the provisions of this Ordinance shall govern that application.

**15.01.060 Severability**

If any part, section, subsection, paragraph, sentence, clause, phrase, or provision of the Ordinance is adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of the Ordinance as a whole.

## CHAPTER 15.02: ADMINISTRATION AND ENFORCEMENT

### PART I: CODE ADMINISTRATION

- 15.02.010 City Council
- 15.02.020 Zoning Board of Adjustment
- 15.02.030 Planning Commission
- 15.02.040 Zoning Administrator
- 15.02.050 Site Plan Review Committee

### PART II: APPLICATIONS, APPROVALS AND ENFORCEMENT

- 15.02.060 General Application Process
- 15.02.070 Amendments (Text and Map)
- 15.02.080 Variances
- 15.02.090 Conditional Uses
- 15.02.100 Zoning Certificate
- 15.02.110 Temporary Use Permit
- 15.02.120 Appeals
- 15.02.130 Enforcement

### PART I: CODE ADMINISTRATION

#### 15.02.010 City Council

The City Council shall have the following powers, pursuant to this Ordinance:

- A. To make final decisions on zoning text or map amendment applications.
- B. To make final decisions on Planned Residential District, Planned Commercial District and Planned Industrial District applications.

#### 15.02.020 Zoning Board of Adjustment

The Zoning Board of Adjustment shall have the following powers, pursuant to this Ordinance:

- A. To make final decisions on applications for variances.
- B. To make final decisions on applications for conditional uses.
- C. To hear and make final decisions on appeals of any zoning determination.
- D. The Zoning Board of Adjustment shall have the following authority in regard to nonconformities:
  - 1. If no structural alterations are made, any nonconforming use may, as a conditional use, be changed to another nonconforming use, provided that the Zoning Board of Adjustment finds that the proposed use is more appropriate for the district than the existing nonconforming use. In permitting this change, the Zoning Board of Adjustment may require appropriate conditions consistent with Chapter 15.26.
  - 2. To authorize, upon appeal, a variance from the restrictions on lot coverage, setbacks or height to a nonconforming lot, consistent with Chapter 15.26.
  - 3. To authorize, upon appeal, a variance from the restrictions on lot coverage, setbacks or height for building additions to an existing nonconforming structure, consistent with Chapter 15.26.

4. To grant, upon appeal, an extension of time for the resumption of a legal nonconforming use. However, any extension shall be granted prior to the expiration of the six (6) month period outlined in Chapter 15.26.

#### **15.02.030 Planning Commission**

The Planning Commission shall have the following powers, pursuant to this Ordinance:

- A. To make recommendations to the City Council on zoning text or map amendment applications.
- B. To make recommendations to the City Council on Planned Residential District, Planned Commercial District and Planned Industrial District applications.

#### **15.02.040 Zoning Administrator**

The Mayor, or his/her designee, shall be considered the Zoning Administrator, and shall have the following powers, pursuant to this Zoning Ordinance:

- A. To review and make decisions on applications for zoning certificates.
- B. To review and make decisions on applications for temporary use permits.
- C. To enforce the provisions of this Ordinance.

#### **15.02.050 Site Plan Review Committee**

The Site Plan Review Committee shall be comprised of at least three members of the Community Development Department. The Site Plan Review Committee shall have the following powers and duties:

- A. To review and make final decisions on site plan review when required before issuance of the zoning certificate.

## **PART II: APPLICATIONS, APPROVALS AND ENFORCEMENT**

### **15.02.060 General Application Process**

#### **A. Filing of Applications**

1. All applications shall be filed with the Community Development Department.
2. The application shall be on forms provided by the City, filed in such number as the instructions provide and include all additional information required. All plans shall be at a scale sufficient to permit a clear and precise understanding of the proposal. The application shall include information, plans and data sufficient to determine whether the application conforms to the requirements set forth in this Ordinance.

#### **B. Completeness**

The Director of Community Development, or his/her designee, shall make a determination of whether or not an application is complete within five (5) working days of application submittal. If the application is not complete, the Director of Community Development, or his/her designee, shall notify the applicant of any deficiencies, and shall take no steps to process the application until the deficiencies are remedied. Once the Director of Community Development, or his/her designee, determines that the application is complete, the application shall be scheduled for consideration by the appropriate body.

#### **C. Fees**

A fee shall be charged and submitted with each application. The fee shall be as set forth in the prevailing schedule of fees most recently adopted by the City Council.

#### **D. Notice**

Notice shall be as required for each application. In the case of mailed notice, failure to mail notice to a person specified in this section, failure of a person to receive notice by mail or failure to mail notice within the time limits required by this section shall not invalidate any proceedings.

#### **D. Withdrawal of Application**

An applicant shall have the right to withdraw or the right to request a continuance on an application at any time prior to the decision on the application. Such withdrawal or request for a continuance shall be in writing. There shall be no refund of fees.

#### **E. Successive Applications**

Within one (1) year of the date of denial, a subsequent application shall not be reviewed or heard unless there is substantial new evidence available, or if a significant mistake of law or of fact affected the prior denial. Such subsequent applicant shall include a detailed statement of the grounds justifying its consideration. The Director of Community Development shall make a determination as to whether the subsequent application is making essentially the same request. If the Director of Community Development finds that there are no grounds for consideration of the subsequent application, he/she shall summarily, and without hearing, deny the request. Such administrative decisions of the Director of Community Development are final and are not subject to appeal to the Zoning Board of Adjustment.

**15.02.070 Amendments (Text and Map)****A. Purpose**

The regulations imposed and the zoning districts created by this Ordinance may be amended from time to time, in accordance with this Section. This process for amending Ordinance text or the zoning map is intended to permit modifications in response to changed conditions or changes in City policy. Amendments are not intended to relieve particular hardships or confer special privileges or rights upon any person or party.

**B. Initiation**

An amendment to the text of this Ordinance or the zoning map may be initiated by the Mayor, City Council, Planning Commission, Community Development Department or owner of any property within the City.

**C. Authority**

The City Council, after receiving a recommendation from the Planning Commission, shall take formal action on requests for text or map amendments.

**D. Procedure**

All applications shall be filed in accordance with the requirements of Section 15.02.060 (General Application Process).

**1. Action by the Planning Commission**

- a. The Planning Commission shall conduct a public hearing on a proposed amendment no more than sixty (60) days of receipt of a complete application. Notice for the public hearing shall be as follows:
  - i. For public hearings on zoning text or map amendment applications, the City shall cause a notice to be published in a newspaper of general circulation within the City. The notice shall include the date, time, place and purpose of such hearing, the name of the applicant, the address of the subject property, and a general description of the proposed zoning text or map amendment. Notice shall be published not less than four (4) days, nor more than twenty (20) days, in advance of the scheduled hearing date.
  - ii. In addition, for public hearings on zoning map amendment applications, written notice shall be mailed by ordinary mail to the owners of all properties located within two-hundred (200) feet of the exterior boundaries of the subject property. Mailed notice shall contain the same information as the published notice. Mailed notice for a zoning map amendment application shall be deposited in the mail no less than four (4) days, nor more than twenty (20) days, in advance of the scheduled hearing date. Failure to mail notice to a person specified in this section, failure of a person to receive notice by mail or failure to mail notice within the time limits required by this section shall not invalidate any proceedings.

- b. Within thirty (30) days of the close of the public hearing, the Planning Commission shall forward to the City Council its recommendation.
- c. The Planning Commission may continue the public hearing to obtain additional information or to serve further notice upon other property owners or persons the Planning Commission determines to be interested in the proposed amendment. Upon recessing for this purpose, the Planning Commission shall announce the date and time when the hearing shall be resumed.
- d. The Planning Commission shall base its recommendation upon the evidence presented at the public hearing as well as the land use policies within the Comprehensive Plan. It is the City's intent that the Ordinance be consistent with the Comprehensive Plan. It is further the City's intent that all amendments to the Ordinance shall also be consistent with the Comprehensive Plan. The Planning Commission shall recommend approval, approval with modifications, or denial on applications for zoning text amendments, and approval or denial on applications for zoning map amendments.

## **2. Action by the City Council**

The City Council shall consider the application within thirty (30) days of receiving the findings of fact and recommendation from the Planning Commission.

- a. The City Council shall conduct a public hearing on a proposed amendment no more than sixty (60) days of receipt of the Planning Commission recommendation. The City shall cause a notice to be published in a newspaper of general circulation within the City. The notice shall include the date, time, place and purpose of such hearing, the name of the applicant, the address of the subject property, and a general description of the proposed zoning text or map amendment. Notice shall be published no less than seven (7) days in advance of the scheduled hearing date. In no case shall a public hearing be scheduled earlier than the next regularly scheduled City Council meeting following the published notice.
- b. Within thirty (30) days of the close of the public hearing, the City Council shall take action in the form of approval, approval with modifications, or denial on applications for zoning text amendments, and approval or denial on applications for zoning map amendments. The City Council may also refer the application back to the Planning Commission for further consideration.
- c. The City Council shall base its recommendation upon the evidence presented at the public hearing as well as the land use policies within the Comprehensive Plan. It is the City's intent that the Ordinance be consistent with the Comprehensive Plan. It is further the City's intent that all amendments to the Ordinance shall also be consistent with the Comprehensive Plan.

## **15.02.080 Variances**

### **A. Purpose**

The variance process is to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this Ordinance that create particular hardships.

**B. Initiation**

An owner of any property in the City may request a variance for that property.

**C. Authority**

The Zoning Board of Adjustment shall take formal action on requests for variances.

**D. Procedure**

All applications shall be filed in accordance with the requirements of Section 15.02.060 (General Application Process).

1. The Zoning Board of Adjustment shall conduct a public hearing within sixty (60) days of receipt of a complete application. Notice for the public hearing shall be as follows:
  - a. For public hearings on variance applications, the City shall cause a notice to be published in a newspaper of general circulation within the City. The notice shall include the date, time, place and purpose of such hearing, the name of the applicant, the address of the subject property, and a general description of the proposed variance. Published notice for a variance application shall be published not less than five (5) days, nor more than fifteen (15) days, in advance of the scheduled hearing date.
  - b. For public hearings on variance applications, written notice shall be mailed by ordinary mail to the owners of all properties located within two-hundred (200) feet of the exterior boundaries of the subject property. Mailed notice shall contain the same information as the published notice. Mailed notice for a variance application shall be deposited in the mail no less than five (5) days in advance of the scheduled hearing date. Failure to mail notice to a person specified in this section, failure of a person to receive notice by mail or failure to mail notice within the time limits required by this section shall not invalidate any proceedings.
2. The Zoning Board of Adjustment may continue the public hearing to obtain additional information or to serve further notice upon other property owners or persons the Zoning Board of Adjustment determines to be interested in the proposed variance. Upon recessing for this purpose, the Zoning Board of Adjustment shall announce the date and time when the hearing shall be resumed.
3. The Zoning Board of Adjustment shall make findings of fact, based upon the evidence presented at the public hearing, with respect to each of the applicable standards in Section 15.02.080.E (Findings of Fact) below.
4. The Zoning Board of Adjustment may impose such conditions and restrictions upon the location, construction, design and use of the property benefited by a variance as may be necessary or appropriate to protect the public interest, adjacent property and property values. Failure to maintain such conditions or restrictions as may be imposed shall constitute grounds for revocation of the variance. The terms of relief granted, including any conditions or restrictions, shall be specifically set forth in the concluding statement separate from the findings of fact.

**E. Findings of Fact**

No variance from the provisions of this Ordinance shall be granted unless the Zoning Board of Adjustment makes findings of fact based directly on the standards and conditions imposed by this section. These standards are as follows:

1. The particular property, because of size, shape, topography or other physical conditions suffers singular disadvantage through the application of this Ordinance, which does not apply to other properties in the vicinity.
2. Because of such disadvantage, the owner is unable to make reasonable use of the affected property.
3. The disadvantage does not exist because of conditions created by the owner or previous owners of the property.
4. Granting the variance will not confer on the applicant any special privileges that are denied by this Ordinance to other properties or structures in the same district.
5. Granting the variance will not be contrary to the public interest, will not adversely affect other property in the vicinity, and will be in harmony with the purpose and intent of this Ordinance.

**F. Variance Less Than Requested**

A variance less than that requested may be granted by the Zoning Board of Adjustment when the record supports the applicant's right to some relief, but not to the entire relief requested.

**15.02.090 Conditional Uses****A. Purpose**

The development and execution of the Ordinance is based upon the division of the City into districts. Within each district the use of land and buildings, and the bulk and location of buildings and structures in relation to the land, are substantially uniform. It is recognized, however, that there are specific uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location. Such uses may be either public or private, and are of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.

**B. Initiation**

An owner of any property in the City may request a conditional use for that property.

**C. Authority**

The Zoning Board of Adjustment shall take formal action on requests for conditional use approval.

**D. Procedure**

All applications shall be filed in accordance with the requirements of Section 15.02.060 (General Application Process).

1. The Zoning Board of Adjustment shall conduct a public hearing within sixty (60) days of receipt of a complete application. Notice for the public hearing shall be as follows:
  - a. For public hearings on conditional use applications, the City shall cause a notice to be published in a newspaper of general circulation within the City. The notice shall include the date, time, place and purpose of such hearing, the name of the applicant, the address of the subject property, and a general description of the proposed conditional use. Published notice for a conditional use application shall be published not less than five (5) days, nor more than fifteen (15) days, in advance of the scheduled hearing date.
  - b. For public hearings on conditional use applications, written notice shall be mailed by ordinary mail to the owners of all properties located within two-hundred (200) feet of the exterior boundaries of the subject property. Mailed notice shall contain the same information as the published notice. Mailed notice for a conditional use application shall be deposited in the mail no less than five (5) days in advance of the scheduled hearing date. Failure to mail notice to a person specified in this section, failure of a person to receive notice by mail or failure to mail notice within the time limits required by this section shall not invalidate any proceedings.
2. The Zoning Board of Adjustment may continue the public hearing to obtain additional information or to serve further notice upon other property owners or persons the Zoning Board of Adjustment determines to be interested in the proposed conditional use. Upon recessing for this purpose, the Zoning Board of Adjustment shall announce the date and time when the hearing shall be resumed.
3. The Zoning Board of Adjustment shall make findings of fact, based upon the evidence presented at the public hearing, with respect to each of the applicable standards in Section 15.02.090.E (Findings of Fact) below.
4. The Zoning Board of Adjustment may impose such conditions and restrictions upon the location, construction, design and use of the property benefited by a conditional use as may be necessary or appropriate to protect the public interest, adjacent property and property values. Failure to maintain such conditions or restrictions as may be imposed shall constitute grounds for revocation of the conditional use. The terms of relief granted, including any conditions or restrictions, shall be specifically set forth in the concluding statement separate from the findings of fact.

#### **E. Findings of Fact**

No conditional use shall be approved unless the Zoning Board of Adjustment makes findings of fact based directly on the standards and conditions imposed by this section. These standards are as follows:

1. The proposed conditional use will comply with all applicable regulations of this Ordinance, including lot requirements, bulk regulations, use limitations and all other standards or conditions contained in the provisions authorizing such use.
2. Adequate utility, drainage and other necessary facilities or improvements have been or will be provided.
3. Adequate access roads or entrance and exit drives will be designed and built to prevent traffic hazards and to minimize traffic conflicts and congestion in public streets and alleys.

4. All necessary permits and licenses required for the operation of the conditional use have been obtained, or it clearly appears that such permits are obtainable for the proposed conditional use on the subject property.
5. All exterior lighting shall be shaded as necessary to direct the light away from neighboring residential properties.
6. The location and size of the conditional use, the nature and intensity of the activities to be conducted in connection with it, the size of the site, and the relationship of the site to adjacent roadways shall be considered to assure the use is in harmony with the appropriate and orderly development of the district and the neighborhood in which it is located.
7. The location, nature and height of buildings, structures, walls and fences on the site, and the nature and extent of landscaping and screening on the site shall be designed so that the use will not reasonably hinder or discourage the appropriate development, use and enjoyment of the adjacent land, buildings and structures.
8. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is located and will contribute to and promote the convenience and welfare of the public.

#### **15.02.100 Zoning Certificate**

##### **A. Purpose**

The purpose of a zoning certificate is to promote Ordinance compliance by establishing a procedure for the City to certify that applications for any permit, license or change in use comply with all standards of this Ordinance.

##### **B. Applicability**

A zoning certificate is required prior to:

- a. Issuance of all building permits, including the construction of new buildings or the structural alteration of an existing building, with the exception of the following:
  - i. All single-family residential dwellings
  - ii. All two-family residential dwellings
- b. A change in the use of land or a building, including a change in a nonconforming use or a nonconforming structure.
- c. Issuance of a certificate of occupancy.
- d. Issuance of a certificate of completion.
- e. Issuance of any City license or permit including, but not limited to, liquor licenses, salvage operation licenses, and rooming and boarding houses.

### **C. Authority**

The Zoning Administrator shall be responsible for issuing zoning certificates upon approval by the Site Plan Review Committee of a site plan. A site plan shall be submitted for review by the Site Plan Review Committee at the same time as an application for a City permit, license or change in use.

### **D. Procedure**

All applications shall be filed in accordance with the requirements of Section 15.02.060 (General Application Process). Complete applications shall be forwarded to the Site Plan Review Committee for review.

#### **1. Action by Site Plan Review Committee**

- a. Applications for site plan review as part of a zoning certificate shall be reviewed by the Site Plan Review Committee within thirty (30) days of filing of the complete application.
- b. If, in the Committee's judgment, the application does not contain sufficient information to enable the Committee to properly discharge its responsibilities, the Committee may request additional information from the applicant. In that event, the thirty (30) day period shall be suspended pending receipt of all information requested by the Committee.
- c. The Site Plan Review Committee shall review the application for compliance with the standards in Section 15.02.100.E (Standards for Review) below.
- d. The Site Plan Review Committee may request modification of the submitted application and resubmittal of a revised application. The revised application shall be processed in the same manner as the initial application.
- e. The Site Plan Review Committee may approve the application subject to certain conditions or minor modifications to be stated in writing and attached to the approved site plan application.
- f. No City permit, license or change in use shall be issued or approved until site plan approval has been granted. If the Site Plan Review Committee approves a site plan, a zoning certificate may then be issued, provided that all other requirements of all other applicable City codes and ordinances are satisfied.

#### **2. Action by Zoning Administrator**

Upon approval of the application by the Site Plan Review Committee, Zoning Administrator, or his/her designee, shall issue a zoning certificate indicating that the application is in compliance with the Ordinance.

#### **3. Consultants**

The Site Plan Review Committee and the Zoning Administrator may utilize the services of professional consultants for research, investigation, and professional opinion in arriving at a recommendation or decision. The applicant whose request requires the use of such professional services shall reimburse to the City the reasonable cost it incurs in using such professional services within ten (10) days of submission of the bill by the City. Consultants include, but shall not be limited to,

professionals in the fields of engineering, law, planning, design, traffic design, finance, and court reporters.

#### **E. Standards for Review**

The scope of the application review includes the location of principal and accessory structures, infrastructure, open space, landscaping, exterior lighting, traffic movement and flow, number of parking spaces, design of parking lots, and location of landscaping and screening. In reviewing site plans, the relationship of the site plan to adopted land use policies, and the goals and objectives of the Comprehensive Plan shall be evaluated. In addition, the following characteristics shall also be considered:

1. The arrangement of the structures and buildings on the site to:
  - a. Allow for the effective use of the proposed development.
  - b. Allow for the efficient use of the land.
  - c. Ensure compatibility with development on adjacent property.
  - d. Respond to off-site utility and service conditions, and minimize potential impacts on existing or planned municipal services, utilities, and infrastructure.
  - e. Protect the public health, safety, convenience, comfort, and general welfare.
  - f. Conform to the requirements of this Ordinance and other applicable regulations.
2. The arrangement of open space or natural features on the site to:
  - a. Create a desirable and functional environment for patrons, pedestrians, and occupants.
  - b. Preserve unique natural resources where possible.
  - c. Provide adequate measures to preserve existing healthy, mature trees wherever practically feasible.
  - d. Respect desirable natural resources on adjacent sites.
  - e. Design drainage facilities to promote the use and preservation of natural watercourses and patterns of drainage.
  - f. Reduce soil erosion and to prevent damage to the development site, streams, drainage ways, streets and adjoining public and private properties.
  - g. Avoid unnecessary or unreasonable alterations to existing topography.
3. The organization of circulation systems to:
  - a. Provide adequate and safe access to the site.
  - b. Minimize potentially dangerous traffic movements.
  - c. Separate pedestrian and auto circulation and provide for bicycle parking or storage insofar as practical.

- d. Minimize curb cuts.
  - e. Minimize the impacts of on-site queue lengths onto adjacent public and private streets and other traveled ways.
  - f. Promote on-site queue lane locations that do not impact circulation or parking located within the development site.
4. The design of off-street parking lots or garages to:
- a. Minimize adverse impacts on adjacent properties.
  - b. Promote logical and safe parking and internal circulation.
5. The design of landscape improvements and related features to:
- a. Create a logical transition to adjoining lots and developments.
  - b. Screen incompatible uses.
  - c. Minimize the visual impact of the development on adjacent sites and roadways.
  - d. Utilize plant materials suitable to withstand the climatic conditions of the City and microclimate of the site.
  - e. Promote and enhance the appearance and image of the City.
6. Site illumination that is designed, located, and installed in a manner that will minimize adverse impacts on adjacent properties.
7. Conformance of the proposed development with the goals and policies of the Comprehensive Plan and all City codes and regulations.

#### **15.02.110 Temporary Use Permit**

##### **A. Purpose**

A temporary use permit is required for limited term activities or events, which occur on private property within the City, that may potentially create off-site impacts to surrounding properties and the neighborhood in which it will occur.

##### **B. Authority**

The Zoning Administrator shall take formal action on requests for temporary use permits.

##### **C. Procedure**

All applications shall be filed in accordance with the requirements of Section 15.02.060 (General Application Process).

1. The Zoning Administrator shall grant temporary use permits for those uses listed in Section 15.02.110.D (Permitted Temporary Uses) below so long they comply with the requirements of this section, including Section 15.02.110.C (Standards for Temporary Uses) and this Ordinance. Unless expressly provided in this section, every temporary use shall comply with the bulk requirements applicable in the district in which the temporary use is located.

2. Temporary uses not specifically listed here shall require the specific approval of the City Council. Such uses may be allowed in any zoning district, provided that such temporary use is consistent with the purpose and intent of this Ordinance and the zoning district in which it is located.
3. Every temporary use shall comply with other conditions required as part of permit approval as may reasonably be necessary to achieve the purposes of this Ordinance, and to protect the public health, safety and general welfare.

#### **C. Standards for Temporary Uses**

All temporary uses shall comply with all the standards listed below.

1. No temporary use shall be permitted that causes, or threatens to cause, an on-site or off-site threat to the public health, safety and general welfare.
2. Every temporary use shall be operated in accordance with any restrictions and conditions as other departments may require. If required by the City, the operator of the temporary use must employ appropriate security personnel.
3. No temporary use shall be permitted if the additional vehicular traffic reasonably expected to be generated by such use would have undue detrimental effects on surrounding streets and uses.
4. No temporary use shall be authorized that would unreasonably reduce the amount of required parking. The Zoning Administrator may make an assessment of the total number of parking spaces that will be reasonably required in connection with a proposed temporary use, on the basis of the particular use, its intensity and the availability of other parking facilities in the area. The Zoning Administrator shall approve such temporary use only if such parking spaces are provided.
5. No temporary use shall be permitted if such use would conflict with another previously authorized temporary use.
6. Signs shall be permitted only in accordance with this Ordinance.

#### **D. Permitted Temporary Uses**

##### **1. Batch Plants (Temporary)**

- a. Temporary batch plants permits are valid only for the duration of a project, not to exceed six (6) months. However, at the end of the six (6) month period, the Zoning Administrator may renew the permit for another six (6) months or to the conclusion of the project, whichever comes first. At the end of such a project, the contractor must restore the area to its original condition.
- b. Temporary batch plants shall be located at least one-thousand (1,000) feet from any recreational area, school or residence.
- c. Temporary batch plants shall be located and designed to mitigate water quality impacts to receiving water bodies, including locations away from watercourses, drainage courses and drain inlets.
- d. As part of the permit application process, the contractor shall submit a routing of trucks to and from the proposed plant as a condition to be approved prior

granting application approval. A temporary batch plant shall only be allowed access via arterial or collector roads and highways. Access via local residential and/or collector roads serving residential areas is prohibited.

## **2. Christmas Tree Sales Lot and Pumpkin Sales Patch**

Christmas tree sales and pumpkin sales patches are allowed in any non-residential zoning district. Any such use shall be evaluated based on the adequacy of the parcel size, parking provisions, traffic access, and the absence of undue adverse impact on other properties. Such use shall be limited to a period not to exceed forty-five (45) days. Sales of Christmas trees and pumpkins as an accessory use to a retail goods establishment do not require a permit. However such accessory sales cannot occupy required parking spaces.

## **3. Farmstands and Farmers Markets**

Farmstands and farmers markets are allowed in any non-residential district. No product may be exhibited or offered for sale except the following: fresh dairy goods, fruits, vegetables, juices, flowers, plants, herbs and spices produced or grown by the vendor, and baked goods made by the vendor(s).

## **4. Outdoor Retail Sales**

Retail goods establishments are permitted outdoor sales and display of merchandise, by either a storeowner or occupant, outside the store and within the same zoning lot. A retail goods establishment shall be permitted to display and sell its merchandise outdoors under the following conditions:

- a. No sales and display area shall be permitted in any public right-of-way or obstruct pedestrian or vehicular traffic. No sales and display area is permitted in any required yard.
- b. Outdoor storage is prohibited for retail goods establishments.
- c. A portion of the parking area may be used for outdoor sales and display on a temporary basis only, in terms of both display structure and goods displayed or sold (no permanent display structures permitted in parking areas). No more than ten percent (10%) of the required parking area for the existing commercial use may be used for the temporary outdoor sales and display, unless approved by the Zoning Administrator.

## **5. Temporary Contractor Trailers and Real Estate Model Units**

Contractor trailers and real estate model units, including temporary real estate offices accessory to a new development, are allowed in any zoning district when accessory to a construction project or a new development. Contractor trailers shall be limited to a period not to exceed the duration of the active construction phase of such project. Real estate model units, including temporary real estate offices, shall be limited to the active selling and leasing of space in such development or six (6) months after issuance of the final certificate of occupancy, whichever is less. These uses shall not contain any sleeping or cooking accommodations, except those located in a model unit used for demonstration purposes only. No trailer, unit or office shall be used as the general office or headquarters of any firm.

## **6 Temporary Storage Containers**

- a. Temporary storage containers accessory to a construction or remodeling project are permitted in any zoning district. Containers are permitted on site for a period not to exceed the duration of the construction or remodeling project and must be removed within one (1) month of receiving approval of final inspections or issuance of a certificate of occupancy.
- b. Temporary storage containers are permitted in any zoning district when used for loading or unloading. Temporary storage containers are permitted on site for this purpose for a period not to exceed seventy-two (72) hours. Such temporary storage containers present for loading or unloading do not require a temporary use permit.
- c. Temporary storage containers shall not be used for permanent storage. They shall not serve as a substitute for permanent storage needs on the site on which they are located. Temporary storage containers shall not be permanently attached to the ground, serviced with permanent utilities or stacked on the site.

## **7. Temporary Storage Trailers**

- a. Temporary storage trailers (i.e., rail shipping containers) shall not be used for permanent storage. They shall not serve as a substitute for permanent storage needs on the site on which they are located. All temporary storage trailers require a temporary use permit and, as part of temporary use approval, a time limit shall be determined by the Zoning Administrator.
- b. Temporary storage trailers shall not be permanently attached to the ground, serviced with permanent utilities or stacked on the site.
- c. Temporary storage trailers are permitted in non-residential districts only, and must be located within the rear yard and screened from the public right-of-way.

## **15.02.120 Appeals**

### **A. Purpose**

The zoning appeals process for review of decisions and determinations of the Zoning Administrator is intended to provide appropriate checks and balances on administrative authority.

### **B. Initiation**

Applications for appeals may be filed by the owner of, or any person having a right of ownership in, any property in the City that is directly affected by a decision made under this Ordinance by the Zoning Administrator.

### **C. Authority**

The Zoning Board of Adjustment shall take formal action on zoning appeals of Zoning Administrator decisions and determinations. Other duties, decisions and actions of the Zoning Administrator, which are not established by this Ordinance, cannot be appealed under this process.

### **D. Procedure**

The Zoning Board of Adjustments shall hold a public hearing within a reasonable time and shall decide the appeal within a reasonable time. At the hearing of the appeal, any

party may appear in person, or by agent or attorney. The Zoning Board of Adjustments may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination.

#### **E. Limitations on Appeals**

A decision may only be appealed if an application is filed within thirty (30) days of that decision.

### **15.02.130 Enforcement**

#### **A. Enforcement**

This Ordinance shall be enforced by the Zoning Administrator. The Zoning Administrator may secure the assistance of the City Attorney to seek an injunction, abatement, Municipal citations or other appropriate actions to enjoin, abate or stop any violation of this Ordinance. At times, the aid of the Police Department may be sought to enforce this Ordinance. The property owner charged with the violation may be held responsible for any legal expenses incurred by the City.

#### **B. Penalties**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with, or who resists the enforcement of any of the provisions of this Ordinance, upon conviction, shall be fined for each offence. Each day that a violation continues shall constitute a separate offense for the purposes of the penalties and remedies available to the City. The accumulation of penalties for violations, but not the obligation for payment for violations already committed, shall cease upon correction of the violation.

#### **C. Fines**

Fines for violation of this Ordinance shall be as set forth in the prevailing schedule of fees most recently adopted by the City Council.

## CHAPTER 15.27: ZONING DISTRICTS

- 15.27.01 Zoning Districts
- 15.27.02 Zoning District Boundaries
- 15.27.03 Annexed Territory

### 15.27.01 Zoning Districts

For the purposes of this Ordinance, the City is divided into zoning districts as outlined below.

#### A. Open Space/Recreation Districts

- A-1 Open Space Conservation District
- A-2 Parks, Estate and Agricultural District
- A-3 Riverboat Docking District

#### B. Residential Districts

- R-1E Single-Family Residential Estates District
- R-1 Single-Family Residential District
- R-1M Single-Family Mobile Home Residential District
- R-2 Two-Family Residential District
- R-3 Low Density Multi-Family Residential District
- R-4 High Density Multi-Family Residential District

#### C. Commercial Districts

- A-P Administrative/Professional District
- C-1 Neighborhood Commercial District
- C-2 General Commercial District
- C-3 Central Business District
- C-4 Downtown Business District
- P-C Planned Commercial District

#### D. Industrial Districts

- I-2 General Manufacturing District (All references to the GM District within this Ordinance shall be referred to as the I-2 District)
- I-3 Heavy Industrial District
- P-I Planned Industrial District

#### E. Overlay Districts

- PR Planned Residential District
- RO Recreation-Tourism District
- AZ Airport Hazard District
- CDO Corridor Design Overlay District

**15.27.02 Zoning District Boundaries**

- A. District boundaries shall be lot lines, other legally described lines or the centerline of streets, alleys, railroad rights-of-way, waterways or such lines extended.
- B. The location and boundaries of these boundaries of these districts are shown on the official zoning map of the City, which is made part of this title by reference.

**15.27.03 Annexed Territory**

Annexed land shall retain the same zoning classification after annexation that it had prior to annexation. Those regulations shall remain in place until the City completes the legislative action to rezone the property.

**A. Voluntary Annexation**

All applications for voluntary annexation of land to the City shall designate the zoning classification which the applicant wishes for their property. The application shall be referred to the Planning Commission for recommendation on both the annexation and the requested zoning. Consideration of the zoning shall follow the procedures for a zoning amendment.

**B. Involuntary Annexation**

Whenever, after public hearing, the City Council may determine that involuntary annexation shall be referred to the Planning Commission for recommendation. Consideration of the zoning shall follow the procedures for a zoning amendment.

## Chapter 15.01

### TITLE AND PURPOSE

#### Sections:

- 15.01.010 Title
- 15.01.020 Purpose

**15.01.010 Title.** This title shall be known, referred to and cited as the "Zoning Ordinance of the City of Council Bluffs, Iowa".

**15.01.020 Purpose.** The purpose of this title is to promote the public health, safety and general welfare of the community. It is designed in accordance with the comprehensive plan to encourage the most appropriate use of land, to protect the value of property, to secure safety from fire, flood and other dangers, to provide adequate light and air, to avoid undue concentration of population and to facilitate the adequate provision of transportation, water, sewage disposal, schools, parks, open space, and other public requirements. (Ord. 5264, Sec. 1, 5/20/96)

## Chapter 15.02

### ADMINISTRATION AND IMPLEMENTATION

#### Sections:

15.02.010	Compliance
15.02.015	Zoning Designation Amendments
15.02.020	Enforcement
15.02.030	Interpretation of standards
15.02.040	Districts
15.02.050	Zoning of annexed land
15.02.060	Amendment
15.02.070	Fees
15.02.080	Penalties
15.02.090	Building and occupancy certificates

**15.02.010 Compliance.** It shall be unlawful for any premises, building or structure or any portion of a building or structure situated in the city, to be used or occupied, erected, moved, reconstructed, extended, enlarged or altered in any manner contrary to the provisions of this title.

- (a) That all references to WM/Wholesale Manufacturing District contained in this code shall thereafter be referred to as I-1/Light Industrial District.
- (b) That all references to GM/General Manufacturing District contained in this code shall hereafter be referred to as I-2/General Industrial District. (Ord. #5367, 3/9/98)

**15.02.020 Enforcement.** It shall be the duty of the mayor or designee, to enforce the provisions of this title. Appeals from a decision of the administrative official enforcing this title may be made to the Board of Adjustment in accordance with Chapter 15.27.

**15.02.030 Interpretation of standards.** In their interpretation and application, the provisions of this title shall be the minimum requirements. Where this title imposes a greater restriction or higher standard than is imposed by any other statute, ordinance, rule, or regulation, the provisions of this title shall govern. Where another statute, ordinance, rule, or regulation imposes a greater restriction or higher standard than this title, the other provision shall govern.

**15.02.040 Districts.** For the purpose of this title, the city is divided into zoning districts as outlined below. District boundaries shall be lot lines, other legally described lines or the centerline of streets, alleys, railroad rights-of-way or such lines extended. The location and boundaries of these districts are shown on the official zoning map of the city which is made part of this title by reference.

**Districts****Designation****OPEN SPACE/RECREATION DISTRICTS:**

Open space conservation	A-1
Parks, estate and agricultural	A-2
Riverboat docking	A-3

**RESIDENTIAL DISTRICTS:**

Single family residential estates	R-1E
Single family residential	R-1
Single family mobile home residential	R-1M
Two family residential	R-2
Low density multi-family residential	R-3
High density multi-family residential	R-4

**COMMERCIAL DISTRICTS**

Administrative/professional	A-P
Neighborhood commercial	C-1
General commercial	C-2
Central business	C-3
Downtown business	C-4
Planned commercial	PC

**INDUSTRIAL DISTRICTS:**

Light Industrial District	I-1
General Industrial District	I-2
Heavy Industrial District	I-3

**OVERLAY DISTRICTS:**

Planned residential	PR
Recreation-tourism	RO
Airport hazard	AZ
Tower overlay	TO
Corridor Design Overlay	CDO

**15.02.050 Zoning of annexed land.**

01. Annexed land shall retain the same zoning classification after annexation that it had prior to annexation. Those regulations shall remain in place until the City completes the legislative action to rezone the property.
02. Voluntary Annexation. All applications for voluntary annexation of land to the city shall designate the zoning classification which the applicant wishes for their property. The application shall be referred to the city planning commission for recommendation on both the annexation and the requested zoning. Consideration of the zoning shall follow the amendment procedure in Section 15.02.060.

03. Involuntary Annexation. Whenever, after public hearing, the city council determines that involuntary annexation proceedings should be undertaken, the zoning of lands proposed for involuntary annexation shall be referred to the city planning commission for recommendation. Consideration of the zoning shall follow the amendment procedure in Section 15.02.060. (Ord. 5954 § 1, 10/8/2007)

#### **15.02.060 Amendment procedure.**

01. Authorization for amendment. An amendment to the text of this title or the zoning map may be initiated by the mayor, city council, city planning commission, community development department, or by application of a property owner or an authorized agent.
02. Application for amendment. An application shall be filed with the community development department, accompanied by the required fee. The application and the department's recommendation shall be referred by the community development director to the city planning commission for public hearing.
03. City planning commission hearing. The planning commission shall hold a public hearing on proposed amendments. Notice of public hearing shall be given by the community development department in the following manner:
  - a. If an amendment to the text of this title or to the zoning map is proposed, notice shall be given by one publication in a newspaper of general circulation in the city, not less than four nor more than twenty days before the date of the hearing. The notice shall state the time and place of the hearing and generally describe the proposed amendment.
  - b. If an amendment to the zoning map is proposed, additional notice shall be given as follows. The notice by publication shall include a legal description and common address of the property proposed to be rezoned. The community development department shall mail written notice by ordinary mail to the owners of record of property, any part of which lies within two hundred feet of the exterior boundaries of the property proposed to be rezoned. The written notice shall contain the same information as the published notice and shall be deposited in the mail not less than four nor more than twenty days before the date of the hearing. Failure to mail notice to a person as specified in this section, or failure of a person to receive notice by mail, or failure to mail notice within the time limits required in this section, shall not invalidate any proceedings or action by the planning commission or city council in connection with the proposed zoning map amendment.

04. Continued hearing. The planning commission may continue a public hearing to obtain additional information or to serve further notice upon other property owners or persons the commission determines may be interested in the proposed amendment. Upon recessing for this purpose, the commission shall announce the date and time when the hearing shall be resumed.
05. Referral to city council. The community development department shall forward the commission's recommendation on the amendment to the city council no later than thirty days after the date of the commission's public hearing or continued public hearing.
06. City council hearing. The council shall publish notice of the time and place of its public hearing on the proposed amendment at least seven days before the hearing, and in no case shall the public hearing be held earlier than the next regularly scheduled city council meeting following the published notice.
07. Record of amendment. The community development director and city clerk shall maintain a current record of amendments to the text and zoning map in a form convenient for use by the public.
08. Consistency with comprehensive plan. It is the intent of the city that the zoning ordinance shall be consistent with the comprehensive plan. It is further the intent of the city that all amendments to the zoning ordinance shall also be consistent with the comprehensive plan.

**15.02.070 Fees.** A fee shall be charged and submitted with each petition or application for rezoning, plan review, zoning text amendment, variance, conditional use, or appeal of an administrative decision. The fee shall be as set forth in the prevailing schedule of fees most recently adopted by the city council.

**15.02.080 Penalties.** Any person found guilty of a violation of any of the provisions of this title shall upon conviction be subject to the penalty provisions as set forth in §8.02.020 of this code. Each day that a violation is allowed to continue shall constitute a separate and distinct violation. At the discretion of the city attorney, any violation of the provisions of this chapter may be pursued as a municipal infraction according to the terms of Chapter 1.95 in lieu of criminal prosecution. (Ord. 5229, Sec. 1, 1/22/01)

**15.02.090 Building and occupancy certificates.**

01. No building permit for the erection, structural alteration, conversion, enlargement, or reconstruction of any building or use of land shall be issued before the application has been submitted, reviewed, and a finding made that the proposed uses will meet the requirements of the Zoning Ordinance for a certificate of occupancy; and no building or premises shall be used or occupied until such certificate is issued.
02. No change in the use or occupancy of land, nor any change of use, occupancy, or occupancy classification under the Building Code of any existing building or portion thereof shall be made, nor shall any new building be used or occupied, until a certificate of occupancy has been issued. (Ord. No. 5323, Sec. 1, 5/9/97)

## Chapter 15.27

### BOARD OF ADJUSTMENT

#### Sections:

15.27.010	Board of adjustment
15.27.020	Powers of board of adjustment
15.27.030	Procedure
15.27.040	Appeals to the board
15.27.050	Conditional uses & variances
15.27.060	Decision by board
15.27.070	Appeal from decision of board

#### 15.27.010 Board of Adjustment

01. Establishment and membership. The authority of the board of adjustment is extended, consistent with Chapter 414 of the Code of Iowa. The board of adjustment shall consist of five members to be appointed by the mayor, subject to approval by the city council. Members shall be appointed for a term of five years. Vacancies shall be filled in the same manner for the unexpired term of any member whose position becomes vacant. In the event the mayor fails to appoint a new member to fill the expiring term of an incumbent, the incumbent shall continue to serve pending appointment of a replacement. Members may be removed for cause after a public hearing by the city council to consider written charges.
02. Organization. Public meetings of the board shall be held once a month when there are issues pending. Special meetings may be called by the chairperson or upon written request of three members. The board shall adopt rules to govern the proceedings of the board. The board shall select from its membership during the first meeting each calendar year, a chairperson and a vice chairperson to serve in the chairperson's absence or disability.
03. Secretary. The community development director or designee shall serve as secretary to the board. The secretary shall not be a member of the board and shall be responsible for maintaining the records of the board.

#### 15.27.020 Powers of the board of adjustment. The board shall have the following powers:

01. Appeals and interpretation. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the mayor or his/her designee in the enforcement of this title or of any ordinance adopted pursuant thereto. The board shall have the authority to interpret this title in any case where it is alleged there is an error in any decision, determination, or interpretation made by the mayor or his/her designee. Interpretations rendered by the board shall be binding upon the mayor or his/her designee in the enforcement of this title.
02. Conditional uses. To hear and decide applications for conditional uses to the terms of this title, and modifications thereof, in accordance with the general regulation of the district in which the property is located and specific standards contained herein. No conditional use permit shall be granted unless the board determines on the basis of specific information presented at the public hearing or contained in the application for such use that each of the following conditions have been satisfied:

- (1.) The proposed conditional use will comply with all applicable regulations of this ordinance, including lot requirements, bulk regulations, use limitations and all other standards or conditions contained in the provisions authorizing such use.
- (2.) Adequate utility, drainage and other necessary facilities or improvements have been or will be provided.
- (3.) Adequate access roads or entrance and exit drives will be designed and built to prevent traffic hazards and to minimize traffic conflicts and congestion in public streets and alleys.
- (4.) All necessary permits and licenses required for the operation of the conditional use have been obtained, or it clearly appears that such permits are obtainable for the proposed conditional use on the subject property.
- (5.) All exterior lighting shall be shaded as necessary to direct the light away from neighboring residential properties.
- (6.) The location and size of the conditional use, the nature and intensity of the activities to be conducted in connection with it, the size of the site, and the relationship of the site to adjacent roadways shall be considered to assure the use is in harmony with the appropriate and orderly development of the district and neighborhood in which it is located.
- (7.) The location, nature and height of building, structures, walls, and fences on the site and the nature and extent of landscaping and screening on the site shall be designed so that the use will not reasonably hinder or discourage the appropriate development, use and enjoyment of the adjacent land, buildings and structures.
- (8.) The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is located and will contribute to and promote the convenience and welfare of the public.
- (9.) Conditions. In permitting a conditional use, the board may impose appropriate conditions and safeguards including but not limited to planting screens, fencing, construction commencement and completion dates, lighting, operational controls, improved traffic circulation, highway access restrictions, yards, parking requirements, the duration of the use or ownership, or any other requirement which the board deems appropriate under the circumstances upon a finding that they are necessary to fulfill the purpose and intent of this title.
- (10.) Existing conditional uses. Changes in use, expansion or contraction of lot area, or alteration of structures or uses classified as conditional uses existing prior to the effective date of this title shall conform to all regulations pertaining to conditional uses.
- (11.) Revocation. The board of adjustment reserves the right to revoke a conditional use if the conditions specified for that use are not adhered to by the applicant and subsequent parties. A conditional use may be revoked after public hearing by the board. Written notice shall be made to the owner and/or contract purchaser as required elsewhere in this chapter.

03. Variances. To authorize upon appeal such variances from the terms of this title that will not be contrary to the public interest, provide relief to unnecessary hardships, and are in conformance with the limitations of its power as authorized by the law of the State of Iowa. The board shall grant a variance only under exceptional circumstances where practical difficulty or unnecessary hardship is so substantial, serious and compelling that relaxation of the general restrictions ought to be granted. No variances shall be granted unless the applicant shall show and the board shall find that:

- (1.) The particular property, because of size, shape, topography or other physical conditions suffers singular disadvantage through the application of this ordinance which disadvantage does not apply to other properties in the vicinity; and
  - (2.) Because of this disadvantage, the owner is unable to make reasonable use of the affected property; and
  - (3.) This disadvantage does not exist because of conditions created by the owner or previous owners of the property; and
  - (4.) Granting the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district; and
  - (5.) Granting the variance will not be contrary to the public interest, will not adversely affect other property in the vicinity, and will be in harmony with the intent and purpose of this ordinance.
  - (6.) Conditions. In permitting a variance, the board may impose appropriate conditions and safeguards including but not limited to planting screens, fencing, construction commencement and completion dates, lighting, operational controls, improved traffic circulation, highway access restrictions, yards, parking requirement, the duration of a use or ownership, or any other requirement which the board deems appropriate under the circumstances, upon a finding that they are necessary to fulfill the purpose and intent of the title.
04. Nonconformities. The board of adjustment shall have the following authority:
- (1.) If no structural alterations are made, any nonconforming use may, as a conditional use, be changed to another nonconforming use, provided that the board finds that the proposed use is more appropriate to the district than the existing nonconforming use. In permitting this change, the board may require appropriate conditions consistent with Chapter 15.26 of this title.
  - (2.) To authorize upon appeal a variance from the restrictions on lot coverage, setbacks, or height to a nonconforming lot, consistent with Chapter 15.26 of this title.
  - (3.) To authorize upon appeal a variance from the restrictions on lot coverage, setbacks, or height for building additions to an existing nonconforming structure, consistent with Chapter 15.26 of this title.
  - (4.) To grant upon appeal an extension of time for the resumption of a legal nonconforming use. However, any extension shall be granted prior to the expiration of the six-month period outlined in Chapter 15.26 of this title.

**15.27.030 Procedure.** The board shall conduct hearings and make decisions in accordance with the following procedure:

01. All meetings shall be open to the public.
02. Notice of the time and place of hearings shall be published in a paper of general circulation not more than 15 nor less than 5 days prior to the hearing. It shall contain the street address or location of the property and a brief description of the nature of the appeal, conditional use, variance or other question.
03. The community development department shall mail written notice by ordinary mail to the owners of record of property, any part of which lies within two hundred feet of the exterior boundaries of the property involved in the request. The names and addresses of such property owners shall be obtained by the applicant from the records of the Pottawattamie County auditor's office. Notice shall set forth the same information required in this section for notice by publication and shall be deposited in the mail not

less than five days prior to the date set for hearing. Where all property located within two hundred feet of the exterior boundaries of the property involved in the request are under the same ownership, the owners of record of all properties abutting such property under the same ownership shall be notified by mail as if they were within two hundred feet of the property involved in the request.

04. Proof of mailing of notice shall be maintained by the secretary of the board. Failure to mail notice to a person as specified in this section, or failure of a person to receive notice by mail, or failure to mail notice within the time limits required in this section, shall not invalidate any proceedings held or action taken by the board in connection with the action requested of it.
05. The board may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons the board determines may be interested in the requested action. Upon recessing for this purpose, the board shall announce the time and date when the hearing will be resumed.
06. The board shall keep minutes of its proceedings showing the vote of each member upon each question and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office to the secretary of the board.
07. The presence of three members of the board shall constitute a quorum. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision or determination of the mayor or designee or to decide in favor of the applicant on any matter upon which it is required to pass or to effect any variation.

#### **15.27.040 Appeals to the board.**

01. Appellant. Appeals to the board may be taken by any person or organization aggrieved or by an officer, department, or board of the city affected by any decision of the mayor or designee. Such appeals shall be made within thirty days after said decision by filing a written notice of appeal to the secretary to the board, specifying the reasons for the appeal.
02. Effect of appeal. An appeal stays all proceedings in furtherance of the action appealed from, including, without limitation of the foregoing, a permittee's right to proceed with development or other activities authorized under a building permit, the issuance of which is a subject of the appeal, unless the mayor or his/her designee certifies to the board after the notice of appeal has been filed with the secretary to the board that a stay would cause imminent peril to life or property. In such case, proceedings or development shall not be stayed otherwise than by a restraining order, which may be granted by the board or by a court of record on application, on notice to the mayor or his/her designee for due cause shown.

**15.27.050 Conditional uses and variances.** Applications for conditional uses and variances shall be filed with the secretary to the board. At a minimum, the application shall include the following:

01. The name and address of each applicant.
02. The names and addresses of the owner of the property in question and of the architect, professional engineer and contractor, if any.
03. The names and addresses of the owners of the property located within 200 feet of the property in question.
04. A written statement of the grounds offered in support of the conditional use or variance.
05. A map or plot plan, drawn to scale, of the property in question.
06. A filing fee and application.
07. A plan of operation for a conditional use permit.

The community development director shall determine the adequacy and completeness of the application. The community development director may require additional information prior to scheduling a hearing by the board.

**15.27.060 Decision by board.** In exercising the powers granted, the board may, in conformity with the provisions of this title, reserve or affirm, wholly or partially, or modify any orders, requirements, decisions or determinations as ought to be made to the end of exercising all the powers of the officer from whom such appeal is taken.

**15.27.070 Appeal from decision of the board.** Any person or organization aggrieved by any decision of the board made under the provisions of this title may present to a court of record a petition duly verified setting forth that such decision is illegal in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision with the secretary to the board. (Ord. 5315, Sec. 5, 2/97)

ORDINANCE NO. 6012

AN ORDINANCE to amend Title 15 “Zoning” of the 2005 Municipal Code of Council Bluffs, Iowa, by repealing Chapters 15.01 “Title and Purpose”, 15.02 “Administration and Implementation”, and 15.27 “Board of Adjustment” in their entirety; and by enacting new Chapters 15.01 “Title, Purpose and Intent”, 15.02 “Administration and Enforcement” and 15.27 “Zoning Districts”.

BE IT ORDAINED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA:

**SECTION 1.** That Title 15 “Zoning” of the 2005 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by repealing Chapter 15.01 “Title and Purpose” in its entirety, and by enacting a new Chapter 15.01 “Title, Purpose and Intent” , to read as follows:

**CHAPTER 15.01  
TITLE, PURPOSE AND INTENT**

Sections

15.01.010	Title
15.01.020	Purpose
15.01.030	Statutory Authorization
15.01.040	Applicability
15.01.050	Transition Rules
15.01.060	Severability

**15.01.010 Title.** This Title shall be known, referred to and cited as the “Zoning Ordinance” of the City of Council Bluffs, Iowa” (the “City”), and will be referred to herein as “the Ordinance”, the same as if the full title were stated.

**15.01.020 Purpose.** This Ordinance regulates and restricts the height, location and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, population density, and the location and use of buildings, structures, and land for commerce, industry, residence and other purposes in order to promote the public health, safety and general welfare of the City, by:

- A. Direct development of the City in accordance with the Comprehensive Plan.
- B. Encouraging efficient urban development patterns.
- C. Preserving agricultural and environmentally sensitive lands.
- D. Preventing soil and water erosion.
- E. Minimizing traffic congestion.
- F. Protecting the value of property.
- G. Securing safety from fire, flood and other dangers.

- H. Providing adequate light and air.
- I. Avoiding undue concentration of population.
- J. Facilitating the adequate provision of transportation, water, sewage disposal, schools, parks, open space and other public requirements.
- K. Preserving historically significant areas of the City.

**15.01.030 Statutory Authorization.** The provisions of Section 414.4 of the Iowa Code, as amended, authorizes the City to determine, establish and enforce regulations, restrictions and the boundaries of the zoning districts set forth in the Ordinance.

**15.01.040 Applicability.**

A. Territorial Application. This Ordinance shall apply to all land, uses, buildings and structures within the corporate limits of the City, including those owned by other municipal corporations and government bodies.

B. General Interpretation and Application. In their interpretation and application, the provisions of the Ordinance shall be held to be the minimum requirements for the promotion and protection of the public health, safety and general welfare, and shall be construed to achieve the purposes for which this Ordinance was adopted.

C. General Prohibition. Except as otherwise provided by the Ordinance, no portion or whole of any building, structure or land shall be used or occupied, and no building or structure, in whole or in part, shall be erected, constructed, reconstructed, moved, enlarged or structurally altered unless it conforms with the provisions of this Ordinance.

D. Private Agreements. The Ordinance is not intended to nullify any private agreement or covenant. However, where this Ordinance is more restrictive than a private agreement or covenant, this Ordinance shall control.

E. Other Laws and Regulations. In addition to the requirements of the Ordinance, all uses of land and structures shall comply with other applicable City, County, State, and Federal laws and regulations. The Ordinance is expressly designed to supplement and be compatible with, without limitation, to the following City plans, regulations or ordinances: Comprehensive Plan; Subdivision Ordinance; Historic Preservation Ordinance; Flood Plain Ordinance; Building and Fire Codes; Rental Housing Code; Property Maintenance Code and other redevelopment, utility, transportation, subarea land use, or park and recreation plans. Unless otherwise specifically provided, the Ordinance shall control over less restrictive statutes, ordinances or regulations, and more restrictive statutes, ordinances or regulations will control over the provisions of this Ordinance.

**15.01.050 Transition Rules.** In determining the applicability of this Ordinance, with respect to the previously applicable zoning regulations, the following rules shall apply.

A. Existing Illegal Uses and Structures. A structure or use that is illegal at the time of the adoption of, but is made legal by the provisions of this Ordinance, is deemed lawful as of the effective date of this Ordinance. However, if that structure or use does not conform with each and every requirement of this Ordinance, then that structure or use shall remain unlawful. It shall be unlawful for any premises, building or structure, or any portion of a building or structure situated in the City to be used or occupied, erected, moved, reconstructed, extended, enlarged or altered in any manner contrary to the provisions of this Ordinance.

B. Existing Permitted Uses. If property is used in a manner that was classified as a permitted use prior to the effective date of this Ordinance, and that use is classified as a conditional use by this Ordinance, that use shall be deemed a lawful conditional use. However, any subsequent addition, enlargement or expansion of that use shall be required to conform to the procedural and substantive requirements for conditional uses pursuant to this Ordinance.

C. Uses Rendered Nonconforming. If property is used in a manner that was a lawful use on or before the effective date of this Ordinance, and this Ordinance no longer classifies that use as either a permitted or conditional use in the zoning district in which it is located, that use shall be deemed a legal nonconforming use and shall be controlled by the provisions of Chapter 15.26 "Nonconformities".

D. Structures and Property Rendered Nonconforming. If a structure or property existing on or before the effective date of this Ordinance does not meet all standards set forth in this Ordinance, that structure or property shall be deemed a legal nonconformity and shall be controlled by the provisions of Chapter 15.26 "Nonconformities".

E. Previously Issued Building Permits. If a building permit for a building or structure was lawfully issued prior to the effective date of this Ordinance, and if construction has begun within one hundred eighty (180) days of the issuance of that permit and diligently pursued to completion, the building or structure may be completed in accordance with the plans on the basis of which the building permit was issued and may, upon completion, be occupied under an occupancy certificate for the use originally intended.

F. Previously Granted Conditional Uses and Variances. All conditional uses and variances granted prior to the effective date of this Ordinance shall remain in full force and effect. The recipient of the conditional use or variance approval may proceed to develop the property in accordance with the approval and all applicable conditions. However, if the recipient has failed to act on the conditional use or variance before the approval expires, including any periods of extension granted, the provisions of this Ordinance shall govern.

G. Pending Applications. If an application is pending on the effective date of the Ordinance or any amendments thereto, the provisions of this Ordinance shall govern that application.

**15.01.060 Severability.** If any part, section, subsection, paragraph, sentence, clause, phrase or provision of the Ordinance is adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity or the Ordinance as a whole.

**SECTION 2.** That Title 15 "Zoning" of the 2005 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by repealing Chapter 15.02 "Administration and Implementation" in its entirety, and by enacting a new Chapter 15.02 "Administration and Enforcement", to read as follows:

## CHAPTER 15.02 ADMINISTRATION AND ENFORCEMENT

### Part I: Code Administration

#### Sections

15.02.010	City Council
15.02.020	Zoning Board of Adjustment
15.02.030	Planning Commission
15.02.040	Zoning Administrator
15.02.050	Site Plan Review Committee

### Part II: Application, Approvals and Enforcement

#### Sections

15.02.060	General Application Process
15.02.070	Amendments (Text and Map)
15.02.080	Variances
15.02.090	Conditional Uses
15.02.100	Zoning Certificate
15.02.110	Temporary Use Permit
15.02.120	Appeals
15.02.130	Enforcement

### **Part I: Code Administration.**

**15.02.010 City Council.** The City Council shall have the following powers, pursuant to this Ordinance:

- A. To make final decisions on zoning text or map amendment applications.
- B. To make final decisions on Planned Residential District, Planned Commercial District and Planned Industrial District applications.

**15.02.020 Zoning Board of Adjustment.** The Zoning Board of Adjustment shall have the following powers, pursuant to this Ordinance:

- A. To make final decisions on applications for variances.
- B. To make final decisions on applications for conditional uses.
- C. To hear and make final decisions on appeals of any zoning determination.
- D. The Zoning Board of Adjustment shall have the following authority in regard to nonconformities:

1. If no structural alterations are made, any nonconforming use may, as a conditional use, be changed to another nonconforming use, provided that the Zoning Board of Adjustment finds that the proposed use is more appropriate for the district than the existing nonconforming use. In permitting this change, the Zoning Board of Adjustment may require appropriate conditions consistent with Chapter 15.26.

2. To authorize, upon appeal, a variance from the restrictions on lot coverage, setbacks or height to a nonconforming lot, consistent with Chapter 15.26.

3. To authorize, upon appeal, a variance from the restrictions on lot coverage, setbacks or height for building additions to an existing nonconforming structure, consistent with Chapter 15.26.

4. To grant, upon appeal, an extension of time for the resumption of a legal nonconforming use. However, any extension shall be granted prior to the expiration of the six (6) month period outlined in Chapter 15.26.

**15.02.030 Planning Commission.** The Planning Commission shall have the following powers, pursuant to this Ordinance:

A. To make recommendations to the City Council on zoning text or map amendment application.

B. To make recommendations to the City Council on Planned Residential District, Planned Commercial District and Planned Industrial District application.

**15.02.040 Zoning Administrator.** The Mayor, or his/her designee, shall be considered the Zoning Administrator, and shall have the following powers, pursuant to this Zoning Ordinance:

A. To review and make decisions on applications for zoning certificates.

B. To review and make decisions on applications for temporary use permits.

C. To enforce the provisions of this Ordinance.

**15.02.050 Site Plan Review Committee.** The Site Plan Review Committee shall be comprised of at least three members of the Community Development Department. The Site Plan Review Committee shall have the following powers and duties:

A. To review and make final decisions on site plan review when required before issuance of the zoning certificate.

## **Part II: Applications, Approvals and Enforcement.**

### **15.02.060 General Application Process.**

A. Filing of Applications.

1. All applications shall be filed with the Community Development Department.

2. The application shall be on forms provided by the City, filed in such number as the instructions provide and include all additional information required. All plans shall be at a scale sufficient to permit a clear and precise understanding of the proposal. The application shall include information, plans and data sufficient to determine whether the application conforms to the requirements set forth in this Ordinance.

B. Completeness. The Director of Community Development, or his/her designee, shall make a determination of whether or not an application is complete within five (5) working days of application submittal. If the application is not complete, the Director of Community Development, or his/her designee, shall notify the applicant of any deficiencies, and shall take no steps to process the application until the deficiencies are remedied. Once the Director of Community Development, or his/her designee, determines that the application is complete, the application shall be scheduled for consideration by the appropriate body.

C. Fees. A fee shall be charged and submitted with each application. The fee shall be as set forth in the prevailing schedule of fees most recently adopted by the City Council.

D. Notice. Notice shall be as required for each application. In the case of mailed notice, failure to mail notice to a person specified in this section, failure of a person to receive notice by mail or failure to mail notice within the time limits required by this section shall not invalidate any proceedings.

E. Withdrawal of Application. An applicant shall have the right to withdraw or the right to request a continuance on an application at any time prior to the decision on the application. Such withdrawal or request for a continuance shall be in writing. There shall be no refund of fees.

F. Successive Applications. Within one (1) year of the date of denial, a subsequent application shall not be reviewed or heard unless there is substantial new evidence available, or if a significant mistake of law or of fact affected the prior denial. Such subsequent application shall include a detailed statement of the grounds justifying its consideration. The Director of Community Development shall make a determination as to whether the subsequent application is making essentially the same request. If the Director of Community Development finds that there are no grounds for consideration of the subsequent applicant, he/she shall summarily, and without hearing, deny the request. Such administrative decisions of the Director of Community Development are final and are not subject to appeal to the Zoning Board of Adjustment.

#### **15.02.070 Amendments (Text and Map).**

A. Purpose. The regulations imposed and the zoning districts created by this Ordinance may be amended from time to time, in accordance with this Section. This process for amending ordinance text or the zoning map is intended to permit modifications in response to changed conditions or changes in City policy. Amendments are not intended to relieve particular hardships or confer special privileges or rights upon any person or party.

B. Initiation. An amendment to the text of this ordinance or the zoning map may be initiated by the Mayor, City Council, Planning Commission, Community Development Department or owner of any property within the City.

C. Authority. The City Council, after receiving a recommendation from the Planning Commission, shall take formal action on requests for text or map amendments.

D. Procedure. All applications shall be filed in accordance with the requirements of Section 15.02.060, "General Application Process".

1. Action by the Planning Commission.

a. The Planning Commission shall conduct a public hearing on a proposed amendment no more than sixty (60) days of receipt of a complete application. Notice for the public hearing shall be as follows:

i. For public hearings on zoning text or map amendment applications, the City shall cause a notice to be published in a newspaper of general circulation within the City. The notice shall include the date, time, place and purpose of such hearing, the name of the applicant, the address of the subject property, and a general description of the proposed zoning text or map amendment. Notice shall be published not less than four (4) days, nor more than twenty (20) days, in advance of the scheduled hearing date.

ii. In addition, for public hearings on zoning map amendment applications, written notice shall be mailed by ordinary mail to the owners of all properties located within two hundred (200) feet of the exterior boundaries of the subject property. Mailed

notice shall contain the same information as the published notice. Mailed notice for a zoning map amendment application shall be deposited in the mail no less than four (4) days, nor more than twenty (20) days, in advance of the scheduled hearing date. Failure to mail notice to a person specified in this section, failure of a person to receive notice by mail or failure to mail notice within the time limits required by this section shall not invalidate any proceedings.

b. Within thirty (30) days of the close of the public hearing, the Planning Commission shall forward to the City Council its recommendation.

c. The Planning Commission may continue the public hearing to obtain additional information or to serve further notice upon other property owners or persons the Planning Commission determines to be interested in the proposed amendment. Upon recessing for this purpose, the Planning Commission shall announce the date and time when the hearing shall be resumed.

d. The Planning Commission shall base its recommendation upon the evidence presented at the public hearing, as well as the land use policies within the Comprehensive Plan. It is the City's intent that the ordinance be consistent with the Comprehensive Plan. It is further the City's intent that all amendments to the Ordinance shall also be consistent with the Comprehensive Plan. The Planning Commission shall recommend approval, approval with modifications, or denial on applications for zoning text amendments, and approval or denial on applications for zoning map amendments.

2. Action by the City Council. The City Council shall consider the application within thirty (30) days of receiving the findings of fact and recommendation from the Planning Commission.

a. The City Council shall conduct a public hearing on a proposed amendment no more than sixty (60) days of receipt of the Planning Commission recommendation. The City shall cause a notice to be published in a newspaper of general circulation within the City. The notice shall include the date, time, place and purpose of such hearing, the name of the applicant, the address of the subject property, and a general description of the proposed zoning text or map amendment. Notice shall be published no less than seven (7) days in advance of the scheduled hearing date. In no case shall a public hearing be scheduled earlier than the next regularly scheduled City Council meeting following the published notice.

b. Within thirty (30) days of the close of the public hearing, the City Council shall take action in the form of approval, approval with modifications, or denial on applications for zoning text amendments, and approval or denial on applications for zoning map amendments. The City Council may also refer the application back to the Planning Commission for further consideration.

c. The City Council shall base its recommendation upon the evidence presented at the public hearing as well as the land use policies within the Comprehensive Plan. It is the City's intent that the Ordinance be consistent with the Comprehensive Plan. It is further the City's intent that all amendments to the Ordinance shall also be consistent with the Comprehensive Plan.

#### **15.02.080 Variances.**

A. Purpose. The variance process is to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this Ordinance that create particular hardships.

B. Initiation. An owner of any property in the City may request a variance for that property.

C. Authority. The Zoning Board of Adjustment shall take formal action on requests for variances.

D. Procedure. All applications shall be filed in accordance with the requirements of Section 15.02.060, "General Application Process".

1. The Zoning Board of Adjustment shall conduct a public hearing within sixty (60) days of receipt of a complete application. Notice for the public hearing shall be as follows:

a. For public hearings on variance applications, the City shall cause a notice to be published in a newspaper of general circulation within the City. The notice shall include the date, time, place and purpose of such hearing, the name of the applicant, the address of the subject property, and a general description of the proposed variance. Published notice for a variance application shall be published not less than five (5) days, nor more than fifteen (15) days in advance of the scheduled hearing date.

b. For public hearings on variance applications, written notice shall be mailed by ordinary mail to the owners of all properties located within two hundred (200) feet of the exterior boundaries of the subject property. Mailed notice shall contain the same information as the published notice. Mailed notice for a variance application shall be deposited in the mail no less than five (5) days in advance of the scheduled hearing date. Failure to mail notice to a person specified in this section, failure of a person to receive notice by mail or failure to mail notice within the time limits required by this section shall not invalidate any proceedings.

2. The Zoning Board of Adjustment may continue the public hearing to obtain additional information or to serve further notice upon other property owners or persons the Zoning Board of Adjustment determines to be interested in the proposed variance. Upon recessing for this purpose, the Zoning Board of Adjustment shall announce the date and time when the hearing shall be resumed.

3. The Zoning Board of Adjustment shall make findings of fact, based upon the evidence presented at the public hearing, with respect to each of the applicable standards in Section 15.02.080E (Findings of Fact) below.

4. The Zoning Board of Adjustment may impose such conditions and restrictions upon the location, construction, design and use of the property benefited by a variance as may be necessary or appropriate to protect the public interest, adjacent property and property values. Failure to maintain such conditions or restrictions as may be imposed shall constitute grounds for revocation of the variance. The terms of relief granted, including any conditions or restrictions, shall be specifically set forth in the concluding statement separate from the findings of fact.

E. Findings of Fact. No variance from the provisions of this Ordinance shall be granted unless the Zoning Board of Adjustment makes findings of fact based directly on the standards and conditions imposed by this section. These standards are as follows:

1. The particular property, because of size, shape, topography or other physical conditions suffers singular disadvantage through the application of this Ordinance, which does not apply to other properties in the vicinity.

2. Because of such disadvantage, the owner is unable to make reasonable use of the affected property.

3. The disadvantage does not exist because of conditions created by the owner or previous owners of the property.

4. Granting the variance will not confer on the applicant any special privileges that are denied by this Ordinance to other properties or structures in the same district.

5. Granting the variance will not be contrary to the public interest, will not adversely affect other property in the vicinity, and will be in harmony with the purpose and intent of this Ordinance.

F. Variance Less Than Requested. A variance less than that requested may be granted by the Zoning Board of Adjustment when the record supports the applicant's right to some relief, but not to the entire relief requested.

#### **15.02.090 Conditional Uses.**

A. Purpose. The development and execution of the Ordinance is based upon the division of the City into districts. Within each district the use of land and buildings, and the bulk and location of buildings and structures in relation to the land, are substantially uniform. It is recognized, however, that there are specific uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location. Such uses may be either public or private, and are of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.

B. Initiation. An owner of any property in the City may request a conditional use for that property.

C. Authority. The Zoning Board of Adjustment shall take formal action on requests for conditional use approval.

D. Procedure. All applications shall be filed in accordance with the requirements of Section 15.02.060 "General Application Process".

1. The Zoning Board of Adjustment shall conduct a public hearing within sixty (60) days of receipt of a complete application. Notice for the public hearing shall be as follows:

a. For public hearings on conditional use applications, the City shall cause a notice to be published in a newspaper of general circulation within the City. The notice shall include the date, time, place and purpose of such hearing, the name of the applicant, the address of the subject property, and a general description of the proposed conditional use. Published notice for a conditional use application shall be published not less than five (5) days, nor more than fifteen (15) days, in advance of the scheduled hearing date.

b. For public hearings on conditional use applications, written notice shall be mailed by ordinary mail to the owners of all properties located within two hundred (200) feet of the exterior boundaries of the subject property. Mailed notice shall contain the same information as the published notice. Mailed notice for a conditional use application shall be deposited in the mail no less than five (5) days in advance of the scheduled hearing date. Failure to mail notice to a person specified in this section, failure of a person to receive notice by mail or failure to mail notice within the time limits required by this section shall not invalidate any proceedings.

2. The Zoning Board of Adjustment may continue the public hearing to obtain additional information or to serve further notice upon other property owners or persons

the Zoning Board of Adjustment determines to be interested in the proposed conditional use. Upon recessing for this purpose, the Zoning Board of Adjustment shall announce the date and time when the hearing shall be resumed.

3. The Zoning Board of Adjustment shall make findings of fact, based upon the evidence presented at the public hearing, with respect to each of the applicable standards in Section 15.02.090E (Findings of Fact), below.

4. The Zoning Board of Adjustment may impose such conditions and restrictions upon the location, construction, design and use of the property benefited by a conditional use as may be necessary or appropriate to protect the public interest, adjacent property and property values. Failure to maintain such conditions or restrictions as may be imposed shall constitute grounds for revocation of the conditional use. The terms of relief granted, including any conditions or restrictions, shall be specifically set forth in the concluding statement separate from the findings of fact.

E. Findings of Fact. No conditional use shall be approved unless the Zoning Board of Adjustment makes findings of fact based directly on the standards and conditions imposed by this section. These standards are as follows:

1. The proposed conditional use will comply with all applicable regulations of this Ordinance, including lot requirements, bulk regulations, use limitations and all other standards or conditions contained in the provisions authorizing such use.

2. Adequate utility, drainage and other necessary facilities or improvements have been or will be provided.

3. Adequate access roads or entrance and exit drives will be designed and built to prevent traffic hazards and to minimize traffic conflicts and congestion in public streets and alleys.

4. All necessary permits and licenses required for the operation of the conditional use have been obtained, or it clearly appears that such permits are obtainable for the proposed conditional use on the subject property.

5. All exterior lighting shall be shaded as necessary to direct the light away from neighboring residential properties.

6. The location and size of the conditional use, the nature and intensity of the activities to be conducted in connection with it, the size of the site, and the relationship of the site to adjacent roadways shall be considered to assure the use is in harmony with the appropriate and orderly development of the district and the neighborhood in which it is located.

7. The location, nature and height of buildings, structures, walls and fences on the site, and the nature and extent of landscaping and screening on the site shall be designed so that the use will not reasonably hinder or discourage the appropriate development, use and enjoyment of the adjacent land, buildings and structures.

8. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is located and will contribute to and promote the convenience and welfare of the public.

#### **15.02.100 Zoning Certificate.**

A. Purpose. The purpose of a zoning certificate is to promote Ordinance compliance by establishing a procedure for the City to certify that applications for any permit, license or change in use comply with all standards of this ordinance.

B. Applicability. A zoning certificate is required prior to:

1. Issuance of all building permits, including the construction of new buildings or the structural alteration of an existing building, with the exception of the following:
  - a. All single-family residential dwellings.
  - b. All two-family residential dwellings.
2. A change in the use of land or a building, including a change in a nonconforming use or a nonconforming structure.
3. Issuance of a certificate of occupancy.
4. Issuance of a certificate of completion.
5. Issuance of any City license or permit including, but not limited to, liquor licenses, salvage operation licenses, and rooming and boarding houses.

C. Authority. The Zoning Administrator shall be responsible for issuing zoning certificates upon approval by the Site Plan Review Committee of a site plan. A site plan shall be submitted for review by the Site Plan Review Committee at the same time as an application for a City permit, license or change in use.

D. Procedure. All applications shall be filed in accordance with the requirements of Section 15.02.060, "General Application Process". Complete applications shall be forwarded to the Site Plan Review Committee for review.

1. Action by Site Plan Review Committee:
  - a. Applications for site plan review as part of a zoning certificate shall be reviewed by the Site Plan Review Committee within thirty (30) days of filing of the complete application.
  - b. If, in the Committee's judgment, the application does not contain sufficient information to enable the Committee to properly discharge its responsibilities, the Committee may request additional information from the applicant. In that event, the thirty (30) day period shall be suspended pending receipt of all information requested by the Committee.
  - c. The Site Plan Review Committee shall review the application for compliance with the standards in Section 15.02.100.E (Standards for Review), below.
  - d. The Site Plan Review Committee may request modification of the submitted application and resubmittal of a revised application. The revised application shall be processed in the same manner as the initial application.
  - e. The Site Plan Review Committee may approve the application subject to certain conditions or minor modifications to be stated in writing and attached to the approved site plan application.
  - f. No City permit, license or change in use shall be issued or approved until site plan approval has been granted. If the Site Plan Review Committee approves a site plan, a zoning certificate may then be issued, provided that all other requirements of all other applicable City codes and ordinances are satisfied.

2. Action by Zoning Administrator. Upon approval of the application by the Site Plan Review Committee, Zoning Administrator, or his/her designee, shall issue a zoning certificate indicating that the application is in compliance with the Ordinance.

3. Consultants. The Site Plan Review Committee and the Zoning Administrator may utilize the services of professional consultants for research, investigation, and professional opinion in arriving at a recommend or decision. The applicant whose request requires the use of such professional services shall reimburse to the City the reasonable cost it incurs in using such professional service within ten (10) days of submission of the bill by the

City. Consultants include, but shall not be limited to, professionals in the fields of engineering, law, planning, design, traffic design, finance, and court reporters.

E. Standards for Review. The scope of the application review includes the location of principal and accessory structures, infrastructure, open space, landscaping, exterior lighting, traffic movement and flow, number of parking spaces, design of parking lots, and location of landscaping and screening. In reviewing site plans, the relationship of the site plan to adopted land use policies, and the goals and objectives of the Comprehensive Plan shall be evaluated. In addition, the following characteristics shall also be considered:

1. The arrangement of the structures and buildings on the site to:
  - a. Allow for the effective use of the proposed development.
  - b. Allow for the efficient use of the land.
  - c. Ensure compatibility with development on adjacent property.
  - d. Respond to off-site utility and service conditions, and minimize potential impacts on existing or planned municipal services, utilities, and infrastructure.
  - e. Protect the public health, safety, convenience, comfort, and general welfare.
  - f. Conform to the requirements of this Ordinance and other applicable regulations.
2. The arrangement of open space or natural features on the site to:
  - a. Create a desirable and functional environment for patrons, pedestrians, and occupants.
  - b. Preserve unique natural resources where possible.
  - c. Provide adequate measures to preserve existing healthy, mature trees wherever practically feasible.
  - d. Respect desirable natural resources on adjacent sites.
  - e. Design drainage facilities to promote the use and preservation of natural watercourses and patterns of drainage.
  - f. Reduce soil erosion and to prevent damage to the development site, streams, drainage ways, streets and adjoining public and private properties.
  - g. Avoid unnecessary or unreasonable alterations to existing topography.
3. The organization of circulation systems to:
  - a. Provide adequate and safe access to the site.
  - b. Minimize potentially dangerous traffic movements.
  - c. Separate pedestrian and auto circulation and provide for bicycle parking or storage insofar as practical.
  - d. Minimize curb cuts.
  - e. Minimize the impacts of on-site queue lengths onto adjacent public and private streets and other traveled ways.
  - f. Promote on-site queue lane locations that do not impact circulation or parking located within the development site.
4. The design of off-street parking lots or garages to:
  - a. Minimize adverse impacts on adjacent properties.
  - b. Promote logical and safe parking and internal circulation.
5. The design of landscape improvements and related features to:
  - a. Create a logical transition to adjoining lots and developments.

- b. Screen incompatible uses.
- c. Minimize the visual impact of the development on adjacent sites and roadways.
- d. Utilize plant materials suitable to withstand the climatic conditions of the City and microclimate of the site.
- e. Promote and enhance the appearance and image of the City.
- 6. Site illumination that is designed, located, and installed in a manner that will minimize adverse impacts on adjacent properties.
- 7. Conformance of the proposed development with the goals and policies of the Comprehensive Plan and all City codes and regulations.

#### **15.02.110 Temporary Use Permit.**

A. Purpose. A temporary use permit is required for limited term activities or events, which occur on private property within the City, that may potentially create off-site impacts to surrounding properties and the neighborhood in which it will occur.

B. Authority. The Zoning Administrator shall take formal action on requests for temporary use permits.

C. Procedure. All applications shall be filed in accordance with the requirements of Section 15.02.060 "General Application Process".

1. The Zoning Administrator shall grant temporary use permits for those uses listed in Section 15.02.110E (Permitted Temporary Uses) below, so long as they comply with the requirements of this section, including Section 15.02.110D (Standards for Temporary Uses) and this Ordinance. Unless expressly provided in this section, every temporary use shall comply with the bulk requirements applicable in the district in which the temporary use is located.

2. Temporary uses not specifically listed here shall require the specific approval of the City Council. Such uses may be allowed in any zoning district, provided that such temporary use is consistent with the purpose and intent of this Ordinance and the zoning district in which it is located.

3. Every temporary use shall comply with other conditions required as part of permit approval as may reasonably be necessary to achieve the purposes of this Ordinance, and to protect the public health, safety and general welfare.

D. Standards for Temporary Uses. All temporary uses shall comply with all the standards listed below:

1. No temporary use shall be permitted that causes, or threatens to cause, an on-site or off-site threat to the public health, safety and general welfare.

2. Every temporary use shall be operated in accordance with any restrictions and conditions as other departments may require. If required by the City, the operator of the temporary use must employ appropriate security personnel.

3. No temporary use shall be permitted if the additional vehicular traffic reasonably expected to be generated by such use would have undue detrimental effects on surrounding streets and uses.

4. No temporary use shall be authorized that would unreasonably reduce the amount of required parking. The Zoning Administrator may make an assessment of the total number of parking spaces that will be reasonably required in connection with a proposed temporary use, on the basis of the particular use, its intensity and the availability of other parking

facilities in the area. The Zoning Administrator shall approve such temporary use only if such parking spaces are provided.

5. No temporary use shall be permitted if such use would conflict with another previously authorized temporary use.

6. Signs shall be permitted only in accordance with this Ordinance.

E. Permitted Temporary Uses.

1. Batch Plants (Temporary).

a. Temporary batch plants are valid only for the duration of a project, not to exceed six (6) months. However, at the end of the six (6) month period, the Zoning Administrator may renew the permit for another six (6) months or to the conclusion of the project, whichever comes first. At the end of such a project, the contractor must restore the area to its original condition.

b. Temporary batch plants shall be located at least one thousand (1,000) feet from any recreational area, school or residence.

c. Temporary batch plants shall be located and designed to mitigate water quality impacts to receiving water bodies, including locations away from watercourses, drainage courses and drain inlets.

d. As part of the permit application process, the contractor shall submit a routing of trucks to and from the proposed plant as a condition to be approved prior to granting application approval. A temporary batch plant shall only be allowed access via arterial or collector roads and highways. Access via local residential and/or collector roads serving residential areas is prohibited.

2. Christmas Tree Sales Lot and Pumpkin Sales Patch. Christmas tree sales and pumpkin sales patches are allowed in any non-residential zoning district. Any such use shall be evaluated based on the adequacy of the parcel size, parking provisions, traffic access, and the absence of undue adverse impact on other properties. Such use shall be limited to a period not to exceed forty-five (45) days. Sales of Christmas trees and pumpkins as an accessory use to a retail goods establishment do not require a permit. However, such accessory sales cannot occupy required parking spaces.

3. Farmstands and Farmers Markets. Farmstands and farmers markets are allowed in any non-residential district. No product may be exhibited or offered for sale except the following: fresh dairy goods, fruits, vegetables, juices, flowers, plants, herbs and spices produced or grown by the vendor, and baked goods made by the vendor(s).

4. Outdoor Retail Sales. Retail goods establishments are permitted outdoor sales and display of merchandise, by either a storeowner or occupant, outside the store and within the same zoning lot. A retail goods establishment shall be permitted to display and sell its merchandise outdoors under the following conditions:

a. No sales and display area shall be permitted in any public right-of-way or obstruct pedestrian or vehicular traffic. No sales and display area is permitted in any required yard.

b. Outdoor storage is prohibited for retail goods establishments.

c. A portion of the parking area may be used for outdoor sales and display on a temporary basis only, in terms of both display structure and goods displayed or sold (no permanent display structures permitted in parking areas). No more than ten percent (10%) of the required parking area for the existing commercial use may be used for the temporary outdoor sales and display, unless approved by the Zoning Administrator.

5. Temporary Contractor Trailers and Real Estate Model Units. Contractor trailers and real estate model units, including temporary real estate offices accessory to a new development, are allowed in any zoning district when accessory to a construction project or a new development. Contractor trailers shall be limited to a period not to exceed the duration of the active construction phase of such project. Real estate model units including temporary real estate offices, shall be limited to the active selling and leasing of space in such development or six (6) months after issuance of the final certificate of occupancy, whichever is less. These uses shall not contain any sleeping or cooking accommodations, except those located in a model unit used for demonstration purposes only. No trailer, unit or office shall be used as the general office or headquarters of any firm.

6. Temporary Storage Containers.

a. Temporary storage containers accessory to a construction or remodeling project are permitted in any zoning district. Containers are permitted on site for a period not to exceed the duration of the construction or remodeling project and must be removed within one (1) month of receiving approval of final inspections or issuance of a certificate of occupancy.

b. Temporary storage containers are permitted in any zoning district when used for loading or unloading. Temporary storage containers are permitted on site for this purpose for a period not to exceed seventy-two (72) hours. Such temporary storage containers present for loading or unloading do not require a temporary use permit.

c. Temporary storage containers shall not be used for permanent storage. They shall not serve as a substitute for permanent storage needs on the site on which they are located. Temporary storage containers shall not be permanently attached to the ground, serviced with permanent utilities or stacked on the site.

7. Temporary Storage Trailers.

a. Temporary storage trailers (i.e., rail shipping containers) shall not be used for permanent storage. They shall not serve as a substitute for permanent storage needs on the site on which they are located. All temporary storage trailers require a temporary use permit and, as part of temporary use approval, a time limit shall be determined by the Zoning Administrator.

b. Temporary storage trailers shall not be permanently attached to the ground, serviced with permanent utilities or stacked on the site.

c. Temporary storage trailers are permitted in non-residential districts only, and must be located within the rear yard and screened from the public right-of-way.

### **15.02.120 Appeals.**

A. Purpose. The zoning appeals process for review of decisions and determinations of the Zoning Administrator is intended to provide appropriate checks and balances on administrative authority.

B. Initiation. Applications for appeals may be filed by the owner of, or any person having a right of ownership in, any property in the City that is directly affected by a decision made under this Ordinance by the Zoning Administrator.

C. Authority. The Zoning Board of Adjustment shall take formal action on zoning appeals of Zoning Administrator decisions and determinations. Other duties, decisions and actions of the Zoning Administrator, which are not established by this Ordinance, cannot be appealed under this process.

D. Procedure. The Zoning Board of Adjustment shall hold a public hearing within a reasonable time and shall decide the appeal within a reasonable time. At the hearing of the appeal, any party may appear in person, or by agent or attorney. The Zoning Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination.

E. Limitations on Appeals. A decision may be appealed if an application is filed within thirty (30) days of that decision.

#### **15.02.130 Enforcement.**

A. Enforcement. This Ordinance shall be enforced by the Zoning Administrator. The Zoning Administrator may secure the assistance of the City Attorney to seek an injunction, abatement, municipal citations or other appropriate actions to enjoin, abate or stop any violation of this Ordinance. At times, the aid of the Police Department may be sought to enforce this Ordinance. The property owner charged with the violation may be held responsible for any legal expenses incurred by the City.

B. Penalties. Any person, firm or corporation that violates, disobeys, omits, neglects or refuses to comply with, or who resists the enforcement of any of the provisions of this Ordinance, upon conviction, shall be fined for each offense. Each day that a violation continues shall constitute a separate offense for the purpose of the penalties and remedies available to the City. The accumulation of penalties for violations, but not the obligation for payment for violations already committed, shall cease upon correction of the violation.

C. Fines. Fines for violation of this Ordinance shall be as set forth in the prevailing schedule of fees as most recently adopted by the City Council.

**SECTION 3.** That Title 15 “Zoning” of the 2005 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by repealing Chapter 15.27 “Board of Adjustment” in its entirety, and by enacting a new Chapter 15.27 “Zoning Districts”, to read as follows:

### **CHAPTER 15.27 ZONING DISTRICTS**

#### **Sections**

- 15.27.010 Zoning Districts
- 15.27.020 Zoning District Boundaries
- 15.27.030 Annexed Territory

**15.27.010 Zoning Districts.** For the purposes of this Ordinance, the City is divided into zoning districts as outlined below:

- A. Open Space/Recreation Districts:
  - A-1 Open Space Conservation District
  - A-2 Parks, Estates and Agricultural District
  - A-3 Riverboat Docking District
- B. Residential Districts:
  - R-1E Single Family Residential Estates District

- R-1 Single-Family Residential District
- R-1M Single-Family Mobile Home Residential District
- R-2 Two-Family Residential District
- R-3 Low Density Multi-Family Residential District
- R-4 High Density Multi-Family Residential District
- C. Commercial Districts:
  - A-P Administrative-Professional District
  - C-1 Neighborhood Commercial District
  - C-2 General Commercial District
  - C-3 Central Business District
  - C-4 Downtown Business District
  - P-C Planned Commercial District
- D. Industrial Districts:
  - I-2 General Manufacturing District (All reference to the GM District within this Ordinance shall be referred to as the I-2 District)
  - I-3 Heavy Industrial District
  - P-I Planned Industrial District
- E. Overlay Districts:
  - PR Planned Residential District
  - RO Recreation-Tourism District
  - AZ Airport Hazard District
  - CDO Corridor Design Overlay District

#### **15.27.020 Zoning District Boundaries**

- A. District boundaries shall be lot lines, other legally described lines or the centerline of streets, alleys, railroad rights-of-way, waterways or such lines extended.
- B. The location and boundaries of these boundaries of these districts are shown on the official zoning map of the City, which is made part of this title by reference.

**15.27.030 Annexed Territory.** Annexed land shall retain the same zoning classification after annexation that it had prior to annexation. Those regulations shall remain in place until the City completes the legislative action to rezone the property.

A. Voluntary Annexation. All applications for voluntary annexation of land to the City shall designate the zoning classification which the applicant wishes for their property. The application shall be referred to the Planning Commission for recommendation on both the annexation and the requested zoning. Consideration of the zoning shall follow the procedures for a zoning amendment.

B. Involuntary Annexation. Whenever, after public hearing, the City Council may determine that involuntary annexation shall be referred to the Planning Commission for recommendation. Consideration of the zoning shall follow the procedures for a zoning amendment.

#### **SECTION 4. REPEALER.** All ordinances or parts of ordinances in conflict with the

provisions of this ordinance are hereby repealed. These are Ordinance No. 5264, Section 1

(part), 1996; Ordinance No. 5323, Section 1 (part), 1997; Ordinance No. 5367, Section 1 (part), 1998; Ordinance No. 5879, Section 1, 2006; Ordinance No. 5954, Section 1, 2007; Ordinance No. 5529, Section 1, 2001; Ordinance No. 5315, Section 5 (part), 1997.

**SECTION 5. SEVERABILITY CLAUSE.** If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions, shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

**SECTION 6. EFFECTIVE DATE.** This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED  
AND \_\_\_\_\_, 2008  
APPROVED

\_\_\_\_\_  
THOMAS P. HANAFAN Mayor

Attest: \_\_\_\_\_  
JUDITH RIDGELEY City Clerk

First Consideration: September 22, 2008  
Second Consideration: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_  
Third Consideration: \_\_\_\_\_

ZT-08-001

**Council Communication**  
**September 22, 2008 City Council Meeting**

Department: Community Development	Ordinance No.: <u>6013</u>	First Reading: 9-22-08 Second Reading: 10-13-08 Third Reading: 10-27-08 Public Hearing: 9-22-08						
Case/Project No.: URN-08-002								
<b>Subject/Title</b>								
Amendment No. 3 to the Mid-America Center Urban Renewal Plan and Area								
<b>Location</b>								
From 23 <sup>rd</sup> Avenue to the Interstate right-of-way between South 21 <sup>st</sup> Street to the east line of Doll Distributing and extending northwest along 35 <sup>th</sup> Street and south along Nebraska Avenue								
<b>Background/Discussion</b>								
<u>Background</u> The Mid-America Center Urban Renewal Plan was approved in May of 2001 with the adoption of Resolution 01-140. It was originally prepared to allow the use of tax increment financing for public improvements associated with the development of the Mid-America Center. Subsequently, Resolution 04-11, adopted in January of 2004 approved Amendment No. 1 to this plan. Amendment No. 1 was intended to facilitate urban renewal assistance to the Bass Pro Shops. Amendment No. 2, adopted by Resolution 06-276 in October of 2006, added additional land to the urban renewal area to assist the City in recovering its public infrastructure and facility investment costs which serve both the Mid-America Center and Horseshoe Casino.								
<u>Discussion</u> It is now necessary to consider adoption of Amendment No. 3 to the plan and area because the City has determined that additional proposed project area activities are possible. The proposed activities identified as potential projects, include the expansion of retail opportunities in the community through the construction of a 374,000 square foot retail center, the issuance of additional city bonds, reconstruction of public infrastructure and the construction of a public safety building. Land will also be added to the east of the amended MAC Urban Renewal Area and the effective term of the Plan will also be eliminated. Concurrent to the adoption of Amendment No. 3, the City intends to modify the existing tax increment financing regime to include the additional area added to the amended urban renewal plan and area.  On August 25, 2008, the City Council passed a resolution of necessity, which directed staff to initiate the process of amending the Mid-America Center Urban Renewal Plan and Area. This resolution established the following actions and timeframes:  <table style="width: 100%; margin-left: 40px;"><tr><td style="width: 35%;">September 3, 2008</td><td>Consultation hearing with affected taxing jurisdictions</td></tr><tr><td>September 9, 2008</td><td>City Planning Commission hearing and review</td></tr><tr><td>September 22, 2008</td><td>City Council public hearing</td></tr></table> The consultation meeting was held on September 3, 2008 and no individuals or groups appeared at the hearing. Additionally, no written correspondence has been received by the Community Development Department either in support or against the proposed amendment.			September 3, 2008	Consultation hearing with affected taxing jurisdictions	September 9, 2008	City Planning Commission hearing and review	September 22, 2008	City Council public hearing
September 3, 2008	Consultation hearing with affected taxing jurisdictions							
September 9, 2008	City Planning Commission hearing and review							
September 22, 2008	City Council public hearing							

**Council Communication**  
**September 22, 2008 City Council Meeting**

**Recommendation**

The Community Development Department recommends approval of the proposed Amendment #3 to the Mid-America Center Urban Renewal Plan and Area and first consideration of the TIF ordinance.

**City Planning Commission Public Hearing – September 9, 2008**

The following appeared before the Planning Commission in favor of the request: Gayle Malmquist, Community Development Department

The following appeared before the Planning Commission in opposition to the request: None.

**City Planning Commission Recommendation**

Concur with the Community Development Department to approve Amendment #3 to the Mid-America Center Urban Renewal Plan and Area, as presented.

VOTE:   Aye   10       Nay   0       Abstain   0       Absent   1       Motion Carried.

**Attachments**

TIF Ordinance

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department  
Approved by: Donald D. Gross, Director, Community Development Department

ORDINANCE NO. 6013

AN ORDINANCE AMENDING ORDINANCE NOS. 5607 AND 5905, PROVIDING THAT GENERAL PROPERTY TAXES LEVIED AND COLLECTED EACH YEAR ON ALL PROPERTY LOCATED WITHIN THE AMENDED MID-AMERICA CENTER (MAC) URBAN RENEWAL AREA (F/K/A MARCC URBAN RENEWAL AREA) OF THE CITY OF COUNCIL BLUFFS, COUNTY OF POTTAWATTAMIE, STATE OF IOWA, BY AND FOR THE BENEFIT OF THE STATE OF IOWA, CITY OF COUNCIL BLUFFS, COUNTY OF POTTAWATTAMIE, COUNCIL BLUFFS COMMUNITY SCHOOL DISTRICT, AND OTHER TAXING DISTRICTS, BE PAID TO A SPECIAL FUND FOR PAYMENT OF PRINCIPAL AND INTEREST ON LOANS, MONIES ADVANCED TO AND INDEBTEDNESS, INCLUDING BONDS ISSUED OR TO BE ISSUED, INCURRED BY SAID CITY IN CONNECTION WITH THE AMENDED MID-AMERICA CENTER (MAC) URBAN RENEWAL REDEVELOPMENT PROJECT

WHEREAS, the City Council of the City of Council Bluffs, Iowa has heretofore, in Ordinance Nos. 5607 and 5905, provided for the division of taxes within the Mid-America Center (MAC) Urban Renewal Project Area (f/k/a MARCC Urban Renewal Area), pursuant to Section 403.19 of the Code of Iowa; and

WHEREAS, additional territory now has been added to the Mid-America Center (MAC) Urban Renewal Project Area (f/k/a MARCC Urban Renewal Area); and

WHEREAS, indebtedness has been incurred by the City, and additional indebtedness is anticipated to be incurred in the future, to finance urban renewal project activities within the amended Mid-America Center (MAC) Urban Renewal Project Area (f/k/a MARCC Urban Renewal Area), and the continuing needs of redevelopment within the amended Mid-America Center (MAC) Urban Renewal Project Area (f/k/a MARCC Urban Renewal Area) are such as to require the continued application of the incremental tax resources of the amended Mid-America Center (MAC) Urban Renewal Project Area (f/k/a MARCC Urban Renewal Area); and

WHEREAS, the following enactment is necessary to accomplish the objectives described in the premises.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, IOWA, THAT:

Ordinance Numbers 5607 and 5905 is hereby amended to read as follows:

Section 1: For purposes of this Ordinance, the following terms shall have the following meanings:

(a) Original Project Area shall mean that portion of the City of Council Bluffs, Iowa described in the Urban Renewal Plan for the Mid-America Center (MAC) Urban Renewal Area (f/k/a MARCC Urban Renewal Area) approved by Resolution No. 01-140 on May 21, 2001, which Original Project Area includes the lots and parcels located within the area legally described as follows:

A parcel of land being a portion of the West Half (W1/2) and a portion of the West Half of the East Half (W1/2 E1/2) of Section 3, and a portion of the North Half (N1/2) of Section 4, all in Township 74 North, Range 44 West of the Fifth Principal Meridian, City of Council Bluffs, Pottawattamie County, Iowa, bounded and described as follows:

Beginning at the west quarter corner of said Section 3;

thence along the west line of said Section 3, North 0 degrees 00 minutes 00 seconds East, 40.02 feet to a point on the northerly right-of-way line of 23rd Avenue;

thence along said northerly right-of-way line, South 88 degrees 23 minutes 25 seconds East, 340.05 feet;

thence continuing along said northerly right-of-way line, North 75 degrees 58 minutes 12 seconds East, 37.20 feet to a point on the westerly right-of-way line of 35th Street Diagonal;

thence along said westerly right-of-way line, North 22 degrees 16 minutes 44 seconds West, 37.20 feet;

thence continuing along said westerly right-of-way line, North 36 degrees 47 minutes 45 seconds West, 173.00 feet;

thence South 53 degrees 12 minutes 15 seconds West, 289.12 feet to a point on the northerly right-of-way line of 23rd Avenue;

thence along said northerly right-of-way line, North 88 degrees 23 minutes 25 seconds West, 26.77 feet;

thence continuing along said northerly right-of-way line, North 88 degrees 08 minutes 44 seconds West, 40.27 feet;

thence North 0 degrees 02 minutes 37 seconds West, 7.93 feet;

thence North 36 degrees 47 minutes 45 seconds West, 11.87 feet;

thence North 53 degrees 12 minutes 15 seconds East, 326.50 feet to a point on the southwesterly right-of-way line of said 35th Street Diagonal;

thence along said 35th Street Diagonal, North 36 degrees 47 minutes 45 seconds West, 1307.28 feet to a point on the southeasterly right-of-way line of Nebraska Avenue;

thence along said southeasterly right-of-way line, South 53 degrees 12 minutes 15 seconds West, 750.00 feet;

thence North 36 degrees 47 minutes 45 seconds West, 100.00 feet;

thence parallel with said southeasterly right-of-way line and along the northwesterly right-of-way line of Nebraska Avenue, North 53 degrees 12 minutes 15 seconds East, 830.00 feet to a point on the northeasterly right-of-way line of said 35th Street Diagonal;

thence along said northeasterly right-of-way line, South 36 degrees 47 minutes 45 seconds East, 1581.05 feet to the beginning of a curve, concave northeasterly, having a radius of 480.82 feet;

thence continuing southeasterly along said northeasterly right-of-way line and along said curve, through a central angle of 51 degrees 35 minutes 40 seconds, 432.97 feet to a point on the northerly right-of-way line of 23rd Avenue;

thence along said northerly right-of-way line, South 88 degrees 23 minutes 25 seconds East, 2087.72 feet to the intersection with the northerly prolongation of the easterly line of a parcel of land conveyed by Joseph B. Katelman and Jeanette Katelman to Iowa Power and Light Company, by Warranty Deed recorded in Book 1497, Page 206 Records of the Pottawattamie County Recorder;

thence along said northerly prolongation and along said easterly line, South 0 degrees 39 minutes 35 seconds West, 370.00 feet to the southeast corner of said conveyed parcel;

thence South 88 degrees 23 minutes 26 seconds East, 82.58 feet;

thence South 0 degrees 47 minutes 48 seconds West, 1272.00 feet;

thence North 88 degrees 23 minutes 26 seconds West, 279.54 feet to the intersection with the north-south centerline of said Section 3;

thence along said north-south centerline, South 0 degrees 39 minutes 35 seconds West, 879.85 feet to a point on the northerly right-of-way line of Interstate Highways 29 and 80;

thence along said Interstate right-of-way line, the following seven (7) courses:

- 1) North 88 degrees 39 minutes 00 seconds West, 379.74 feet;

- 2) North 65 degrees 50 minutes 40 seconds West, 323.86 feet;
- 3) North 88 degrees 09 minutes 40 seconds West, 441.03 feet;
- 4) North 52 degrees 46 minutes 05 seconds West, 615.62 feet;
- 5) North 44 degrees 44 minutes 50 seconds West, 507.81 feet;
- 6) North 42 degrees 29 minutes 15 seconds West, 445.31 feet;
- 7) North 43 degrees 22 minutes 01 second West, 490.44 feet to the most southerly corner of the Doll Distributing parcel;

thence along the easterly line of said Doll Distributing parcel and along the northerly prolongation of said easterly line, North 0 degrees 00 minutes 45 seconds East, 981.95 feet to the Point of Beginning.

(b) The only purpose of Amendment No. 1 to the Urban Renewal Plan for the Mid-America Center (MAC) Urban Renewal Area (f/k/a MARCC Urban Renewal Area) approved by Resolution No. 04-11 on January 26, 2004, was to specifically identify project activities not currently identified in the existing plan.

(c) Amendment No. 2 Area shall mean that portion of the City of Council Bluffs, Iowa described in Amendment No. 2 to the Urban Renewal Plan for the Mid-America Center (MAC) Urban Renewal Area (f/k/a MARCC Urban Renewal Area) approved by Resolution No. 06-276 on October 23, 2006, which Amendment No. 2 Area includes the lots and parcels located within the area legally described as follows:

A PARCEL OF LAND LOCATED IN THE WEST HALF OF THE SOUTHEAST QUARTER (W1/2 SE1/4) OF SECTION 3, TOWNSHIP 74 NORTH, RANGE 44 WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 3;

THENCE ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER, SOUTH 00 DEGREES 39

MINUTES 35 SECONDS WEST, 1552.04 FEET TO THE  
TRUE POINT OF BEGINNING:

THENCE SOUTH 88 DEGREES 23 MINUTES 26  
SECONDS EAST, 279.66 FEET;

THENCE NORTH 00 DEGREES 47 MINUTES 48  
SECONDS EAST, 1222.00 FEET;

THENCE NORTH 88 DEGREES 23 MINUTES 26  
SECONDS WEST, ALONG A LINE 330.00 FEET SOUTH  
OF AND PARALLEL TO THE NORTH LINE OF SAID  
SOUTHEAST QUARTER (SE1/4) OF SECTION 3, A  
DISTANCE OF 82.58 FEET:

THENCE NORTH 00 DEGREES 39 MINUTES 35  
SECONDS EAST, ALONG A LINE 200.00 FEET EAST OF  
AND PARALLEL TO THE WEST LINE OF SAID  
SOUTHEAST QUARTER (SE1/4) SECTION 3, A  
DISTANCE OF 290.00 FEET:

THENCE SOUTH 88 DEGREES 23 MINUTES 26  
SECONDS EAST, ALONG A LINE 40.00 FEET SOUTH  
OF AND PARALLEL TO THE NORTH LINE OF SAID  
SOUTHEAST QUARTER (SE1/4) SECTION 3, A  
DISTANCE OF 1117.97 FEET:

THENCE SOUTH 00 DEGREES 39 MINUTES 48  
SECONDS WEST, A DISTANCE OF 2435.39 FEET TO A  
POINT THAT IS 165.00 FEET NORTH OF AND 1317.73  
FEET EAST OF THE SOUTH QUARTER CORNER OF  
SAID SECTION 3;

THENCE NORTH 88 DEGREES 40 MINUTES 24  
SECONDS WEST, ALONG A LINE 165.00 FEET NORTH  
OF AND PARALLEL TO THE SOUTH LINE OF SAID  
SOUTHEAST QUARTER (SE1/4) SECTION 3, A  
DISTANCE OF 1317.73 FEET TO THE WEST LINE OF  
SAID SOUTHEAST QUARTER (SE1/4) SECTION 3;

THENCE NORTH 00 DEGREES 39 MINUTES 35 SECONDS EAST, ALONG SAID WEST LINE OF THE SOUTHEAST QUARTER (SE 1/4) SECTION 3, A DISTANCE OF 929.85 FEET TO THE POINT OF BEGINNING AND INCLUDING THE ABUTTING RIGHT-OF-WAY ON THE SOUTH.

SAID PARCEL CONTAINS AN AREA OF 69.5 ACRES, MORE OR LESS.

(d) Amendment No. 3 Area shall mean that portion of the City of Council Bluffs, Iowa described in Amendment No. 3 to the Urban Renewal Plan for the Mid-America Center (MAC) Urban Renewal Area (f/k/a MARCC Urban Renewal Area) approved by Resolution No. \_\_\_\_\_ on September 22, 2008, which Amendment No. 3 Area includes the lots and parcels located within the area legally described as follows:

A parcel of land being a portion of the East Half of the Southeast Quarter (E1/2 SE1/4) and a portion of the South Half of the Northeast Quarter (S1/2 NE1/4) of Section 3, Township 74 North, Range 44 West of the Fifth Principal Meridian and Blocks 11 thru 18, 39 thru 46, 67 thru 74, 95 thru 98, Railroad Addition, all in the City of Council Bluffs, Pottawattamie County, Iowa, bounded and described as follows:

Beginning at the east quarter corner of said Section 3;

thence along the North line of said Railroad Addition, South 89 degrees 07 minutes 44 seconds East, 1,374.81 feet to a point on the northerly prolongation of the east right-of-way line of South 21st Street;

thence along said northerly prolongation and along said east right-of-way line, South 0 degrees 33 minutes 10 seconds West, 2,475.09 feet to a point on the northerly right-of-way line of Interstate Highways 29 and 80;

thence along said Interstate right-of-way line, the following 11 courses:

- 1) North 89 degrees 07 minutes 41 seconds West, 386.61 feet
- 2) North 67 degrees 41 minutes 30 seconds West, 793.02 feet
- 3) North 89 degrees 27 minutes 04 seconds West, 169.64 feet
- 4) South 0 degrees 32 minutes 56 seconds West, 25.26 feet
- 5) North 89 degrees 07 minutes 47 seconds West, 82.00 feet
- 6) North 0 degrees 33 minutes 51 seconds East, 28.13 feet
- 7) South 73 degrees 40 minutes 23 seconds West, 543.90 feet
- 8) South 38 degrees 36 minutes 51 seconds West, 52.25 feet
- 9) South 73 degrees 40 minutes 36 seconds West, 158.89 feet to the beginning of a curve, concave northwesterly, having a radius of 750.43 feet;
- 10) southwesterly along said curve, through a central angle of 18 degrees 02 minutes 04 seconds, 236.21 feet;
- 11) North 88 degrees 16 minutes 36 seconds West, 371.78 feet to a point on the west line of said East Half of the Southeast Quarter (E1/2 SE1/4) of said Section 3;

thence along said West line, North 0 degrees 39 minutes 48 seconds East, 2,435.39 feet to a point on the South right-of-way line of 23rd Avenue;

thence along said south right-of-way line, North 88 degrees 22 minutes 15 seconds West, 1,117.36 feet;

thence North 0 degrees 39 minutes 35 seconds East, 80.18 feet to a point on the North right-of-way line of said 23rd Avenue;

thence along said north right-of-way line, South 88 degrees 23 minutes 25 seconds East, 1,793.57 feet to the beginning of curve, concave southwesterly, having a radius of 568.05 feet;

thence continuing along said north right-of-way line and along said curve, through a central angle of 22 degrees 41 minutes 01 second, 225.39 feet to a point on the North line of said East Half of the Southeast Quarter (E1/2 SE1/4) of said Section 3;

thence along said North line, South 89 degrees 08 minutes 00 seconds East, 409.82 feet to the Point of Beginning;

said parcel contains an area of 148 acres, more or less.

(e) Amended Project Area shall mean that portion of the City of Council Bluffs, Iowa included within the Original Project Area, the Amendment No. 1 Area, the Amendment No. 2 Area and the Amendment No. 3 Area, which Amended Project Area includes the lots and parcels located within the area legally described as follows:

#### ORIGINAL PROJECT AREA

A parcel of land being a portion of the West Half (W1/2) and a portion of the West Half of the East Half (W1/2 E1/2) of Section 3, and a portion of the North Half (N1/2) of Section 4, all in Township 74 North, Range 44 West of the Fifth Principal Meridian, City of Council Bluffs, Pottawattamie County, Iowa, bounded and described as follows:

Beginning at the west quarter corner of said Section 3;

thence along the west line of said Section 3, North 0 degrees 00 minutes 00 seconds East, 40.02 feet to a point on the northerly right-of-way line of 23rd Avenue;

thence along said northerly right-of-way line, South 88 degrees 23 minutes 25 seconds East, 340.05 feet;

thence continuing along said northerly right-of-way line, North 75 degrees 58 minutes 12 seconds East, 37.20 feet to a point on the westerly right-of-way line of 35th Street Diagonal;

thence along said westerly right-of-way line, North 22 degrees 16 minutes 44 seconds West, 37.20 feet;

thence continuing along said westerly right-of-way line, North 36 degrees 47 minutes 45 seconds West, 173.00 feet;

thence South 53 degrees 12 minutes 15 seconds West, 289.12 feet to a point on the northerly right-of-way line of 23rd Avenue;

thence along said northerly right-of-way line, North 88 degrees 23 minutes 25 seconds West, 26.77 feet;

thence continuing along said northerly right-of-way line, North 88 degrees 08 minutes 44 seconds West, 40.27 feet;

thence North 0 degrees 02 minutes 37 seconds West, 7.93 feet;

thence North 36 degrees 47 minutes 45 seconds West, 11.87 feet;

thence North 53 degrees 12 minutes 15 seconds East, 326.50 feet to a point on the southwesterly right-of-way line of said 35th Street Diagonal;

thence along said 35th Street Diagonal, North 36 degrees 47 minutes 45 seconds West, 1307.28 feet to a point on the southeasterly right-of-way line of Nebraska Avenue;

thence along said southeasterly right-of-way line, South 53 degrees 12 minutes 15 seconds West, 750.00 feet;

thence North 36 degrees 47 minutes 45 seconds West, 100.00 feet;

thence parallel with said southeasterly right-of-way line and along the northwesterly right-of-way line of Nebraska Avenue, North 53 degrees 12 minutes 15 seconds East, 830.00 feet to a point on the northeasterly right-of-way line of said 35th Street Diagonal;

thence along said northeasterly right-of-way line, South 36 degrees 47 minutes 45 seconds East, 1581.05 feet to the beginning of a curve, concave northeasterly, having a radius of 480.82 feet;

thence continuing southeasterly along said northeasterly right-of-way line and along said curve, through a central angle of 51 degrees 35 minutes 40 seconds, 432.97 feet to a point on the northerly right-of-way line of 23rd Avenue;

thence along said northerly right-of-way line, South 88 degrees 23 minutes 25 seconds East, 2087.72 feet to the intersection with the northerly prolongation of the easterly line of a parcel of land conveyed by Joseph B. Katelman and Jeanette Katelman to Iowa Power and Light Company, by Warranty Deed recorded in Book 1497, Page 206 Records of the Pottawattamie County Recorder;

thence along said northerly prolongation and along said easterly line, South 0 degrees 39 minutes 35 seconds West, 370.00 feet to the southeast corner of said conveyed parcel;

thence South 88 degrees 23 minutes 26 seconds East, 82.58 feet;

thence South 0 degrees 47 minutes 48 seconds West, 1272.00 feet;

thence North 88 degrees 23 minutes 26 seconds West, 279.54 feet to the intersection with the north-south centerline of said Section 3;

thence along said north-south centerline, South 0 degrees 39 minutes 35 seconds West, 879.85 feet to a point on the northerly right-of-way line of Interstate Highways 29 and 80;

thence along said Interstate right-of-way line, the following seven (7) courses:

- 1) North 88 degrees 39 minutes 00 seconds West, 379.74 feet;
- 2) North 65 degrees 50 minutes 40 seconds West, 323.86 feet;
- 3) North 88 degrees 09 minutes 40 seconds West, 441.03 feet;
- 4) North 52 degrees 46 minutes 05 seconds West, 615.62 feet;
- 5) North 44 degrees 44 minutes 50 seconds West, 507.81 feet;
- 6) North 42 degrees 29 minutes 15 seconds West, 445.31 feet;
- 7) North 43 degrees 22 minutes 01 second West, 490.44 feet to the most southerly corner of the Doll Distributing parcel;

thence along the easterly line of said Doll Distributing parcel and along the northerly prolongation of said easterly line, North 0 degrees 00 minutes 45 seconds East, 981.95 feet to the Point of Beginning.

#### AMENDMENT NO. 1

Amendment No. 1 added no new land.

#### AMENDMENT NO. 2 AREA

A PARCEL OF LAND LOCATED IN THE WEST HALF OF THE SOUTHEAST QUARTER (W1/2 SE1/4) OF SECTION 3, TOWNSHIP 74 NORTH, RANGE 44 WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 3;

THENCE ALONG THE WEST LINE OF SAID  
SOUTHEAST QUARTER, SOUTH 00 DEGREES 39  
MINUTES 35 SECONDS WEST, 1552.04 FEET TO THE  
TRUE POINT OF BEGINNING:

THENCE SOUTH 88 DEGREES 23 MINUTES 26  
SECONDS EAST, 279.66 FEET;

THENCE NORTH 00 DEGREES 47 MINUTES 48  
SECONDS EAST, 1222.00 FEET;

THENCE NORTH 88 DEGREES 23 MINUTES 26  
SECONDS WEST, ALONG A LINE 330.00 FEET SOUTH  
OF AND PARALLEL TO THE NORTH LINE OF SAID  
SOUTHEAST QUARTER (SE1/4) OF SECTION 3, A  
DISTANCE OF 82.58 FEET:

THENCE NORTH 00 DEGREES 39 MINUTES 35  
SECONDS EAST, ALONG A LINE 200.00 FEET EAST OF  
AND PARALLEL TO THE WEST LINE OF SAID  
SOUTHEAST QUARTER (SE1/4) SECTION 3, A  
DISTANCE OF 290.00 FEET:

THENCE SOUTH 88 DEGREES 23 MINUTES 26  
SECONDS EAST, ALONG A LINE 40.00 FEET SOUTH  
OF AND PARALLEL TO THE NORTH LINE OF SAID  
SOUTHEAST QUARTER (SE1/4) SECTION 3, A  
DISTANCE OF 1117.97 FEET:

THENCE SOUTH 00 DEGREES 39 MINUTES 48  
SECONDS WEST, A DISTANCE OF 2435.39 FEET TO A  
POINT THAT IS 165.00 FEET NORTH OF AND 1317.73  
FEET EAST OF THE SOUTH QUARTER CORNER OF  
SAID SECTION 3;

THENCE NORTH 88 DEGREES 40 MINUTES 24  
SECONDS WEST, ALONG A LINE 165.00 FEET NORTH  
OF AND PARALLEL TO THE SOUTH LINE OF SAID

SOUTHEAST QUARTER (SE1/4) SECTION 3, A  
DISTANCE OF 1317.73 FEET TO THE WEST LINE OF  
SAID SOUTHEAST QUARTER (SE1/4) SECTION 3;

THENCE NORTH 00 DEGREES 39 MINUTES 35  
SECONDS EAST, ALONG SAID WEST LINE OF THE  
SOUTHEAST QUARTER (SE 1/4) SECTION 3, A  
DISTANCE OF 929.85 FEET TO THE POINT OF  
BEGINNING AND INCLUDING THE ABUTTING RIGHT-  
OF-WAY ON THE SOUTH.

SAID PARCEL CONTAINS AN AREA OF 69.5 ACRES,  
MORE OR LESS.

#### AMENDMENT NO. 3 AREA

A parcel of land being a portion of the East Half of the  
Southeast Quarter (E1/2 SE1/4) and a portion of the South  
Half of the Northeast Quarter (S1/2 NE1/4) of Section 3,  
Township 74 North, Range 44 West of the Fifth Principal  
Meridian and Blocks 11 thru 18, 39 thru 46, 67 thru 74, 95  
thru 98, Railroad Addition, all in the City of Council Bluffs,  
Pottawattamie County, Iowa, bounded and described as  
follows:

Beginning at the east quarter corner of said Section 3;

thence along the North line of said Railroad Addition, South  
89 degrees 07 minutes 44 seconds East, 1,374.81 feet to a  
point on the northerly prolongation of the east right-of-way  
line of South 21st Street;

thence along said northerly prolongation and along said east  
right-of-way line, South 0 degrees 33 minutes 10 seconds  
West, 2,475.09 feet to a point on the northerly right-of-way  
line of Interstate Highways 29 and 80;

thence along said Interstate right-of-way line, the following  
11 courses:

- 1) North 89 degrees 07 minutes 41 seconds West, 386.61 feet
- 2) North 67 degrees 41 minutes 30 seconds West, 793.02 feet
- 3) North 89 degrees 27 minutes 04 seconds West, 169.64 feet
- 4) South 0 degrees 32 minutes 56 seconds West, 25.26 feet
- 5) North 89 degrees 07 minutes 47 seconds West, 82.00 feet
- 6) North 0 degrees 33 minutes 51 seconds East, 28.13 feet
- 7) South 73 degrees 40 minutes 23 seconds West, 543.90 feet
- 8) South 38 degrees 36 minutes 51 seconds West, 52.25 feet
- 9) South 73 degrees 40 minutes 36 seconds West, 158.89 feet to the beginning of a curve, concave northwesterly, having a radius of 750.43 feet;
- 10) southwesterly along said curve, through a central angle of 18 degrees 02 minutes 04 seconds, 236.21 feet;
- 11) North 88 degrees 16 minutes 36 seconds West, 371.78 feet to a point on the west line of said East Half of the Southeast Quarter (E1/2 SE1/4) of said Section 3;

thence along said West line, North 0 degrees 39 minutes 48 seconds East, 2,435.39 feet to a point on the South right-of-way line of 23rd Avenue;

thence along said south right-of-way line, North 88 degrees 22 minutes 15 seconds West, 1,117.36 feet;

thence North 0 degrees 39 minutes 35 seconds East, 80.18 feet to a point on the North right-of-way line of said 23rd Avenue;

thence along said north right-of-way line, South 88 degrees 23 minutes 25 seconds East, 1,793.57 feet to the beginning of curve, concave southwesterly, having a radius of 568.05 feet;

thence continuing along said north right-of-way line and along said curve, through a central angle of 22 degrees 41 minutes 01 second, 225.39 feet to a point on the North line of said East Half of the Southeast Quarter (E1/2 SE1/4) of said Section 3;

thence along said North line, South 89 degrees 08 minutes 00 seconds East, 409.82 feet to the Point of Beginning;

said parcel contains an area of 148 acres, more or less.

Section 2: The taxes levied on the taxable property in the Amended Project Area, legally described in Section 1 hereof, by and for the benefit of the State of Iowa, City of Council Bluffs, County of Pottawattamie, Council Bluffs Community School District, and all other taxing districts from and after the effective date of this Ordinance shall be divided as hereinafter in this Ordinance provided.

Section 3: As to the Original Project Area, that portion of the taxes which would be produced by the rate at which the tax is levied each year by or for each of the taxing districts taxing property in the Original Project Area upon the total sum of the assessed value of the taxable property in the Original Project Area as shown on the assessment roll as of January 1, 2000, being the first day of the calendar year preceding the effective date of Ordinance No. 5607, shall be allocated to and when collected be paid into the fund for the respective taxing district as taxes by or for said taxing district into which all other property taxes are paid. The taxes so determined shall be referred herein as the "base period taxes" for such area.

As no new territory was by Amendment No. 1, base period taxes shall be computed in the same manner as for the Original Project Area.

As to Amendment No. 2 Area, base period taxes shall be computed in the same manner using the total assessed value shown on the assessment roll as of January 1, 2005,

being the assessment roll applicable to property in such area as of January 1 of the calendar year preceding the effective date of Ordinance No. 5905.

As to Amendment No. 3 Area, base period taxes shall be computed in the same manner using the total assessed value shown on the assessment roll as of January 1, 2007, being the assessment roll applicable to property in such area as of January 1 of the calendar year preceding the effective date of this Ordinance.

Section 4: That portion of the taxes each year in excess of the base period taxes for the Amended Project Area, determined for each sub-area thereof as provided in Section 3 of this Ordinance, shall be allocated to and when collected be paid into the special tax increment fund previously established by the City of Council Bluffs to pay the principal of and interest on loans, monies advanced to, or indebtedness, whether funded, refunded, assumed or otherwise, including bonds issued under authority of Section 403.9 or Section 403.12 of the Code of Iowa, incurred by the City of Council Bluffs, Iowa to finance or refinance, in whole or in part, urban renewal projects undertaken within the Amended Project Area pursuant to the Urban Renewal Plan, as amended, except that taxes for the regular and voter-approved physical plant and equipment levy of a school district imposed pursuant to Section 298.2, but only to the extent authorized in Section 403.19(2), and taxes for payment of bonds and interest of each taxing district shall be collected against all taxable property within the Amended Project Area without any limitation as hereinabove provided.

Section 5: Unless or until the total assessed valuation of the taxable property in the areas of the Amended Project Area exceeds the total assessed value of the taxable property in said areas shown by the assessment rolls referred to in Section 3 of this Ordinance, all of the taxes levied and collected upon the taxable property in the Amended Project Area shall be paid into the funds for the respective taxing districts as taxes by or for the taxing districts in the same manner as all other property taxes.

Section 6: At such time as the loans, monies advanced, bonds and interest thereon and indebtedness of the City of Council Bluffs referred to in Section 4 hereof have been paid, all monies thereafter received from taxes upon the taxable property in the Amended Project Area shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property.

Section 7: All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed. The provisions of this Ordinance are intended and shall be construed so as to continue the division of taxes from property within the Original Project Area and Amendment No. 2 Area under the provisions of Section 403.19

of the Code of Iowa, as authorized in Ordinance Nos. 5607 and 5905, and to fully implement the provisions of Section 403.19 of the Code of Iowa with respect to the division of taxes from property within the Amendment No. 3 Area as described above. In the event that any provision of this Ordinance shall be determined to be contrary to law it shall not affect other provisions or application of this Ordinance which shall at all times be construed to fully invoke the provisions of Section 403.19 of the Code of Iowa with reference to the Amended Project Area and the territory contained therein.

Section 8: This Ordinance shall be in effect after its final passage, approval and publication as provided by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_,  
2008.

\_\_\_\_\_  
Thomas P. Hanafan, Mayor

ATTEST:

\_\_\_\_\_  
Judith H. Ridgeley, City Clerk

Read first time: September 22, 2008

Read second time: \_\_\_\_\_

Read third time: \_\_\_\_\_

PASSED AND APPROVED: \_\_\_\_\_

PUBLISHED: \_\_\_\_\_

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